S. HRG. 101-20

OVERSIGHT OF DOD'S MANAGEMENT OF INSIDE INFORMATION IN THE ACQUISITION PROCESS

HEARING

BEFORE THE

SUBCOMMITTEE ON
OVERSIGHT OF GOVERNMENT MANAGEMENT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

FEBRUARY 24, 1989

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE
95-941 WASHINGTON : 1989

S401-29

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

COMMITTEE ON GOVERNMENTAL AFFAIRS

JOHN GLENN, Ohio, *Chairman*

SAM NUNN, Georgia
CARL LEVIN, Michigan
JIM SASSER, Tennessee
DAVID PRYOR, Arkansas
JEFF BINGAMAN, New Mexico
HERBERT KOHL, Wisconsin
JOSEPH I. LIEBERMAN, Connecticut

WILLIAM V. ROTH, JR., Delaware
TED STEVENS, Alaska
WILLIAM S. COHEN, Maine
WARREN B. RUDMAN, New Hampshire
JOHN HEINZ, Pennsylvania
PETE WILSON, California

LEONARD WEISS, *Staff Director*
JO ANNE BARNHART, *Minority Staff Director*
MICHAL SUE PROSSER, *Chief Clerk*

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT

CARL LEVIN, Michigan, *Chairman*

DAVID PRYOR, Arkansas
JEFF BINGAMAN, New Mexico
HERBERT KOHL, Wisconsin
JOSEPH I. LIEBERMAN, Connecticut

WILLIAM S. COHEN, Maine
WARREN B. RUDMAN, New Hampshire
JOHN HEINZ, Pennsylvania
PETE WILSON, California

LINDA J. GUSTITUS, *Staff Director and Chief Counsel*
PETER K. LEVINE, *Counsel*
JACK MITCHELL, *Investigator*
MARY BERRY GERWIN, *Staff Director and Chief Counsel to the Minority*
FRANKIE DE VERGIE, *Chief Clerk*

CONTENTS

Opening statements: Page

Senator Levin 1
Senator Bingaman 5
Senator Lieberman 5
Senator Kohl 6
Senator Cohen 7
Senator Pryor 16

WITNESSES

FRIDAY, FEBRUARY 24, 1989

Michael P.W. Stone, Under Secretary of the Army 9
H. Lawrence Garrett III, Under Secretary of the Navy 10
John J. Welch, Jr., Assistant Secretary of the Air Force for Acquisition 13
Robert B. Costello, Under Secretary of Defense for Acquisition 41
Robert P. Murphy, Associate General Counsel, U.S. General Accounting Office 46
William A. Anders, senior executive vice president, operations, Textron, Inc., and Robert F. Trimble, vice president, contracts, Martin Marietta Corp., on behalf of the Aerospace Industries Association of America, Inc 50

ALPHABETICAL LIST OF WITNESSES

Anders, William A.:
Testimony 50
Prepared statement with attachments 115
Costello, Robert B.:
Testimony 41
Prepared statement 99
Garrett, H. Lawrence, III:
Testimony 10
Prepared statement 72
Murphy, Robert P.:
Testimony 46
Prepared statement 108
Stone. Michael P.W.:
Testimony 9
Prepared statement 63
Trimble, Robert F.:
Testimony 52
Prepared statement with attachments 115
Welch, John J.:
Testimony 13
Prepared statement with an attachment 84

APPENDIX

Prepared statements of witnesses in order of appearance 63

DEPARTMENT OF DEFENSE DOCUMENTS

Letter to Senator Levin from Dr. Robert Costello, the Under Secretary of Defense, February 6, 1989, with attachment 150
Compendium of Laws, Regulations, Directives and Instructions Regarding Collusive Bidding on Contracts Involving the Department of Defense, September 1988 (Draft) 153

Page

Compendium of Laws, Regulations, Directives and Instructions Regarding Specifications Which Allegedly Favor One Contractor Over Another on DOD Contracts, September 1988 (Draft) 164
Compendium of Laws, Regulations, Directives and Instructions Regarding the Disclosure of Data in the Department of Defense, September 1988 (Draft) 187

DEPARTMENT OF THE ARMY DOCUMENTS

Letter to Senator Levin from Michael P.W. Stone, Under Secretary of the Army, January 19, 1989, with attachments 249
Letter to the Subcommittee on Oversight of Government Management, from Larry T. Brown, Lieutenant Colonel, Judge Advocate General's Corps, Legislative Counsel, Department of the Army, February 12, 1989, with attachment 302

DEPARTMENT OF THE NAVY DOCUMENTS

Letter to the Subcommittee on Oversight of Government Management, from Chester Paul Beach, Jr., Special Assistant to the Under Secretary of the Navy, January 18, 1989, with attachments 305
Letter to Senator Carl Levin from H. Lawrence Garrett III Under Secretary of the Navy, February 3, 1989, with attachments 351
Letter to the Subcommittee on Oversight of Government Management, from Chester Paul Beach, Jr., Februray 15, 1989, with attachment 391
Letter to the Subcommittee on Oversight of Government Management, from Chester Paul Beach, Jr., February 23, 1989, with attachment 395

DEPARTMENT OF THE AIR FORCE DOCUMENTS

Letter to Senator Levin from Timothy L. Titus, Colonel, USAF, Chief, Program Liaison Division, Office of Legislative Liaison, Department of the Air Force, with attachments 399
Information on Disciplinary Actions Taken (provided by the Department of the Navy) 440

MATERIALS REGARDING PUBLICATION OF ARMY "POM"

Memorandum for the Administrative Assistant to the Secretary of the Army, from Ronald E. Adams, Director, HQDA Security Office, February 7, 1989 443
"Inside the Pentagon," Special Report—Army's FY-90-94 R&D Budget Plan, provided by the Department of the Army 457

MATERIALS REGARDING AEGIS SUPPORT CONTRACT

Fact Sheet on the Navy's Aegis 409G Procurement (prepared by the staff of the Subcommittee on Oversight of Government Management) 465

MATERIALS REGARDING CADE MANAGER CONTRACT

Memorandum from Roger G. Darley, Colonel, JAGC, Chief Counsel, regarding Contracts with Industry Concerning USASDC Acquisition Plans, December 22, 1988 469
Letter to Senator Levin from Lt. Gen. John F. Wall, March 28, 1989 471

POST-HEARING MATERIALS

Letter to the Hon. Robert B. Costello, Under Secretary of Defense for Acquisition, from Senator Carl Levin, March 24, 1989 477
Dr. Costello's response for the record, April 6, 1989 479

OVERSIGHT OF DOD'S MANAGEMENT OF INSIDE INFORMATION IN THE ACQUISITION PROCESS

FRIDAY, FEBRUARY 24, 1989

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
SUBCOMMITTEE ON OVERSIGHT OF
GOVERNMENT MANAGEMENT,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:32 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Carl Levin, Chairman of the Subcommittee, presiding.

Present: Senators Levin, Pryor, Bingaman, Kohl, Lieberman, and Cohen.

Staff present: Linda J. Gustitus, Staff Director and Chief Counsel; Peter K. Levine, Counsel; Jack Mitchell, Staff Investigator; Mary Berry Gerwin, Minority Staff Director and Chief Counsel to the Minority; Sean McAvoy, Minority Professional Staff Member; Frankie de Vergie, Chief Clerk; and Deirdre Walsh, Intern.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. The Subcommittee will come to order.

Senator Cohen has been detained somewhere on an important matter, so we are going to begin without him.

On June 14, 1988, Federal search warrants were served on more than a dozen defense contractors and consultants, and several high-ranking Pentagon officials in connection with a procurement fraud investigation known as "Operation Ill Wind." A principal charge in this investigation is that "inside information" has been leaked from the Pentagon to defense contractors.

In the wake of these revelations, numerous contractor employees and consultants were asked to comment in the press on the "inside information" allegations. What they said was alarming.

One Washington lawyer familiar with procurement issues was quoted as saying:

> If what they are saying is it's a crime to talk to people about inside information, they had better start building a lot of new jails in Washington. It is going to create a new crime, and it is going to be a crime that everybody in Washington is guilty of.

A securities analyst at Prudential-Bache Securities was quoted as saying: "If you don't hire consultants with inside information, you don't get the business. Everybody does it."

And a former executive with several Government contracting firms was quoted as saying: "We were laughing at the fact that

somebody paid money for the information. We get information free from the Government. People who pay for it are pretty foolish. There is not an agency in town that does not hand out inside information."

In early September, I directed the Subcommittee staff to look into the issue of "inside information" in defense contracting. We wanted to find out just what inside information is and how adequately its release is controlled by the Department of Defense. Staff interviews quickly confirmed the existence of a systemic problem with the handling of sensitive procurement and planning information by the Department of Defense.

In fact, several of the Subcommittee's initial interviews confirmed that the "Ill Wind" situation was not unique. One interviewee, a former Washington marketing representative of a major defense contractor, related to the Subcommittee staff charges that he had previously made in a successful civil suit against his former employer. He stated that this company had regular channels of information in the Department of Defense through which it would "bootleg" Pentagon budget documents, proprietary documents of competitors, and classified documents that had been passed to the company outside official channels.

A second interviewee, a current employe of a second major contractor, stated that "there have been cases where we have gotten a competitor's proposal" and that "business marketing people have traditionally had and relied on that information in the past." When they are told that this is unethical, he said, they complain that their hands are being tied and that no other company is bound in this way.

The Congress addressed this type of disclosure last fall in the so-called "Procurement Integrity" provision of Senate Bill 2215, which expressly makes it illegal for Government officials to disclose proprietary or source selection sensitive data to contractors. The Procurement Integrity provision also imposed new civil, criminal, contractual and administrative penalties on contractors and Government officials who violate this standard.

Because Congress has already addressed this issue, and because we wanted to avoid interference with the ongoing "Ill Wind" investigation, the Subcommittee's further investigation focused on categories of documents other than the proprietary and source selection sensitive documents that we understand to be under investigation. So let nobody misunderstand our objective in this hearing—we intend to address the disclosure of pre-procurement documents, not the kinds of information that are at issue in the "Ill Wind" investigation.

In December, the Subcommittee sent letters to the Under Secretary of Defense for Acquisition and to the Acquisition Executive for each of the three military departments, soliciting detailed information regarding DOD's officials policies and regulations on disclosure of inside information. These letters asked about policies and rules relating to the disclosure of planning and budgetary data, needs and requirement information, technical data on specific defense systems, and procurement planning information.

In response to these letters, DOD and the three services listed 336 separate regulations, policy letters, guidelines, memoranda, in-

structions, orders, notes and pamphlets addressing the disclosure of procurement and planning information. Several of these regulations are more than 100 pages long. The list alone took 89 pages to reproduce. I might add that the services appear to have worked long and hard to prepare these responses, and that we appreciate that effort.

And by the way, let me add, with a note of appreciation, I also thank the services and the DOD for the lengthy testimony that they have prepared for today. You have been most cooperative, not only in preparing responses to our voluminous questions—and this is a technical subject and a complex subject—but your written preparation today is extremely helpful as well.

Each service stated that existing rules and regulations provide adequate guidance to Government officials and private contractors and consultants as to what types of information may and what types may not be disclosed. As the Department of Defense concluded:

> Even a cursory review of the DOD list should indicate that existing statutory and administrative disclosure controls are adequate to combat any unauthorized release of procurement-related information.

However, and very unfortunately, in my opinion, a review of the services' policies and regulations reveals a system of rules and regulations that are highly complex, confusing, unclear, and occasionally misunderstood even by the officials responsible for administering them.

On some documents, the services were unable to cite any rules at all in which their official positions are stated. On other documents, they cited rules that either failed to reference the specific type of document at issue or described the type of document without stating any rules for disclosure. In still other cases, the rules that they cited provided unclear guidance—for example, the statement that a certain kind of document may not be disclosed "except as specifically authorized by cognizant authority."

In one case, the three services even took different positions as to whether the disclosure of a specific document is appropriate. In that same case, the services' official positions in response to the Subcommittee letters were inconsistent with the positions taken by the departments' procurement experts in earlier interviews with the Subcommittee staff. Moreover, the official position taken by one of the services appears to be directly contradicted by the department's own written rules.

Further, even where the official position on disclosure is clear, it does not always appear to be consistent with the department's practices.

For example, the Department of Defense has clear rules stating that procurement officials should not disclose details of a competitor's proposal to a contractor during the procurement process. Nonetheless, several representatives of major defense contractors told the Subcommittee staff that it is not at all unusual for DOD procurement officials to tell them that their company's price is "10 percent off" or that "so-and-so's proposal is 15 percent lower." Some acknowledged that their companies had received similar information with regard to the speed, complexity, timing or weight of

their products. A former Government official, now a consultant, reported similar disclosures and concluded that "that kind of inside information can totally determine the winner" of a competition.

Similarly, all three services agree that the so-called "POM"—POMs are the services' budgetary requests to the Secretary of Defense—should never be made available to contractors. However, contractor representatives told the Subcommittee staff that these documents are available to them. One contractor representative told the Subcommittee staff that, "you aren't worth a damn if you don't have the POM." A second explained that although the final version of the POMs became less available after a criminal case was brought in 1984, the inputs of lower-level organizations are often available as a "local option" from some commands within the services.

The Department of Defense Inspector General has formally acknowledged in testimony before the Senate Armed Services Committee that a number of contractors have had access to POMs. In fact, excerpts from a POM were published in the periodical, "Inside the Pentagon" last summer. The Army Security Office conducted a brief investigation, but concluded that, "since so many different people were responsible for small portions of the POM, and since it was not really compartmentalized, there is virtually no known method of ferreting out the culprit unless someone comes forward and admits the disclosure."

In summary, it appears that one could plow through all of the thousands of pages of disclosure regulations cited by the Department of Defense and still be confused about whether certain kinds of documents can be released.

One obvious result of the lack of clear rules and consistent practice on inside information is that actual disclosure practices vary depending on the product, the service, the individuals involved on the Government side, and how aggressive a company is in pursuing information.

The GAO's Office of Special Investigations will testify today on its review of allegations that inside information was improperly disclosed to a potential contractor on an Army contract. In the course of this investigation, the GAO and the Army's Criminal Investigative Division interviewed dozens of experienced procurement officials at the Army's Strategic Defense Command about the propriety of the disclosures and—this is the significant finding—they found substantial disagreement relative to the propriety of the disclosure. This broad disagreement among experienced procurement officials on the propriety of specific disclosures demonstrates the confusion that exists at operational levels in the Department of Defense.

A second result of the lack of clear rules and consistent practice is that—as one contractor representative told the Subcommittee staff—"it incentivizes intrigue in the system." Other contractor representatives indicated that information is frequently available from the Government on a "catch-as-catch-can" basis, or by "visiting a guy's office," "through association," or "by shoe leather."

One contractor told the Subcommittee staff that the lack of clear rules leads to "pressures" and "invitations" from industry to Government officials. A second stated that Government officials and

industry marketers feel that they have to meet in clandestine settings to pass documents under the table that should be available above the table. According to this individual, the communications themselves are proper, but nobody understands the rules, and many Government officials feel guilty even talking to industry.

A third result of the lack of clear disclosure rules and consistent practice on disclosure is suspicion and mistrust that can undermine the integrity of the procurement process and significantly delay the award of contracts. In one case examined by the Subcommittee staff, the Navy received numerous anonymous complaints about improper leaks of inside information. The Navy concluded that on two separate occasions, confidential cost data information had been leaked, leading to delays of almost 2 years in the procurement.

So unclear rules and inconsistent practices in the handling of inside information lead to delays, added costs and litigation. They lead to the appearance of favoritism and wired contracts. They sap morale, and they discourage competition. They help cast a pall over the procurement process.

We must act—the Department of Defense must act—to help lift that pall.

Let me now turn to my colleagues. I think Senator Bingaman will be next.

Senator?

OPENING STATEMENT OF SENATOR BINGAMAN

Senator BINGAMAN. Thank you, Mr. Chairman.

I will just very briefly say that I commend you for holding this hearing on a very complex subject. I think you have identified the goals that we all share, which are to figure out how to come up with more clear rules, how to be sure that those rules are understood, eliminate some of the confusion that exists, and how to ensure that there is consistent practice in the application of those rules.

Obviously, this is a very difficult subject to wade through, and I think the more a person wades into it, the more you are struck with the quagmire of paperwork and duplication that exists in the regulations.

But I hope that our witnesses can give us some insight into how that is going to be cleared up.

Thank you.

Senator LEVIN. Thank you, Senator Bingaman.

Let me particularly welcome our two newcomers to our first Subcommittee hearing. We are delighted to have both of you on this Subcommittee. I cannot tell you how much we look forward to having you work with us.

Senator Lieberman?

OPENING STATEMENT OF SENATOR LIEBERMAN

Senator LIEBERMAN. Thank you, Mr. Chairman.

May I say how happy I am to be on this Subcommittee, and how much I look forward to working with you and your staff.

I have been over some of the material in preparation for this hearing. This is one of those classic examples of taking the ideals

expressed by a legislative body in the law and working out the real, nitty-gritty details. The details are much harder to express effectively than are the ideals that we express in legislation.

I gather the process of competition was begun in large measure because of the work that this Subcommittee did in bringing about the passage of the Competition in Contracting Act of 1984. That competition is critical to the overriding challenge that our Government faces now, which is to bring our deficits into line. If we are going to succeed, our ability to demand effectively and fairly competition in military procurement will be critical. An important part of promoting competition is trying to clarify a process that is not inherently clear.

So having said that, I look forward to these hearings, and I commend you and your staff for undertaking them.

Senator LEVIN. Thank you, Senator Lieberman.

Senator Kohl?

OPENING STATEMENT OF SENATOR KOHL

Senator KOHL. Thank you, Mr. Chairman.

I would like to begin by congratulating you and Senator Cohen for the work you have done on procurement issues over the past few years.

From time to time, the Congress and the public pay some attention to procurement. When a major scandal like "Ill Wind" develops, some TV cameras may actually follow folks around for a few days, but it is fairly rare for procurement matters to capture the public imagination for any sustained period of time. In fact, I suspect that not even a death threat by the Ayatollah could turn the Federal acquisition regulation into a bestseller.

Senators Levin and Cohen have not, however, been content with looking at procurement when it is a popular issue. They have been slugging away at this stuff for a long time, doing the kind of work that does not make headlines, but does make our Government more efficient and more effective.

Now, I do not claim to have their experience or knowledge in dealing with the procurement code. In fact, the closest I have ever come to it was during my campaign last year, when my opponent accused me of making excessive profits on some coffee cakes the Government was buying from a firm which I then owned.

In some ways, that experience demonstrates the necessity of getting to know the rules which govern the procurement process. We want honest people to deal with the Government, and we want the Government to deal honestly with people. And that is the subject of this hearing—just how honestly and fairly and how well the Government deals with contractors.

The issue before us today focuses on how information is released if all the contractors have access to the same information, if different procurement officials use the same standards for releasing information, and if different services have the same standards for releasing the same information.

These are important questions and well worth exploring, but it seems to me we need to place the answers we uncover in a more broad context. It seems to me that one of the flaws in the procure-

ment system is its fragmentation. We have duplication in terms of process, but a lack of coordination in terms of procedure. The net result is that the system by its very nature produces waste, offers opportunities for corruption, and guarantees inefficiency.

It seems to me we need to look at ways to consolidate the procurement process, to centralize it, and to make it more consistent and coherent.

Finally, we also need to find a way to make the process more professional. One of the things that concerns me is that we give a lot of responsibility to people who are not always sufficiently well-trained to exercise that responsibility. This is not a criticism at all of the people, of their abilities, or their motives. Instead, it is a criticism of a system which does not always offer adequate rewards to attract and retain the best people. That is a basic concern of mine.

I look forward to working with Senator Levin, Senator Cohen, and the rest of my colleagues in an effort to find a way to deal with and improve upon this problem.

Senator LEVIN. Thank you, Senator Kohl.

Now I will turn to Senator Cohen.

OPENING STATEMENT OF SENATOR COHEN

Senator COHEN. Thank you very much, Mr. Chairman.

I will just briefly commend you for calling these hearings and indicate that Senator Levin and I have worked very closely together since coming to the Senate, through serving on this Committee and the Armed Services Committee, to try to develop a procurement system which gives the government the best possible equipment and materiel at the best possible price. As a result of the Competition in Contracting Act, which I authored, the Federal Government has been able to save billions of dollars in recent years.

But as with any reform, there are those individuals who tend to see ways of circumventing the rules themselves.

We are caught in something of a dilemma where some of the services, I am sure, will indicate that uniformity is not necessarily the basic ingredient for assuring regularity of process and that some flexibility has to be infused into the system. Our difficulty is that there seems to be greater flexibility than there is regularity, and unfortunately that creates a confusion in terms of which services are applying which rules, which rules of disclosure apply in practice. In the process. I think there is at least a potential for a breakdown of the system.

There have to be rules of the road; otherwise we would have a sort of "road warrior" mentality prevail, whereby those who have the biggest or most expensive lobbying interests, perhaps in Washington, and those who have inside information, try to develop perhaps an "Ivan Boesky" line into the Pentagon to take advantage of the system.

So when there aren't any rules, I think that we invite the kind of problems that we have seen in the past. Our attempt is to find out exactly why it is that we cannot have uniformity, and within those uniform rules insist upon a rigid application to make sure that people are not taking undue advantage of the disclosure procedures.

I ask that my full written statement be inserted in the record. Thank you, Mr. Chairman.

Senator LEVIN. Thank you, Senator Cohen.

[Senator Cohen's prepared statement follows:]

PREPARED STATEMENT OF SENATOR COHEN

Mr. Chairman, I am pleased that you have called these hearings today to explore a subject that is of vital importance to the efficiency and the integrity of our military procurement system, namely, the Department of Defense's management of sensitive procurement and planning information.

Operation "Ill Wind," the ongoing procurement fraud investigation, has raised serious concerns about the improper use of proprietary bid and proposal information by contractors and consultants doing business with the Pentagon. While we will not know the total reach of this procurement scandal for some time, this investigation has already served to focus close attention on the damage to the Government that can result from leaks of sensitive information within the procurement system.

Following the initial reports of the "Ill Wind" investigation, various contractors and consultants have suggested in the press that leaks of inside information are commonplace in the procurement process. These statements have led the subcommittee to question how pervasive the problem of inside information trading is—and whether there is a clear understanding between the Pentagon and its contractors on what information should or should not be disclosed.

The subcommittee's investigation has revealed that the disclosure guidelines may be inadequate in the early stages of the procurement process. A vast "grey area" of inside information appears to exist, where the rules of disclosure are murky, and the disclosure practices are inconsistent. Documents and information in this "grey area"—such as DOD internal budget and planning information, government estimates of program costs, and acquisition and source selection plans—are crucial to the Government, and can be vital information for a contractor to have in order to gain the competitive edge on a contract.

I certainly recognize that not all disclosure decisions can be purely black or white. The question of whether to disclose a certain document involves balancing the many needs of the Government, such as national security concerns and the need to protect the internal decision-making process of the executive branch, with the need to disclose as much information as necessary to a contractor in order to allow them to meet the Government's needs. Still, I have concerns that there is now a disturbing amount of disagreement and uncertainty throughout the defense industry and even among the Navy, Army, and Air Force themselves over whether certain types of documents should be disclosed. In some cases, no rules exist. In other cases, there is disagreement over what rules govern, or whether, in the real world, certain types of information are routinely shared with contractors as a matter of course.

The lack of clear guidance on when information can be released to one or more contractors has a direct bearing on both the integrity and efficiency of our procurement system. Inconsistent disclosure practices can encourage contractors to manipulate the system by trying to obtain information that is not readily available to their competitors. When the disclosure rules are not clear, it is an open invitation for contractors to push as hard as possible in order to get that extra piece of information that may be a key to winning a future contract. The effect of such a system can be the creation of a clandestine race for information that is unavailable to one's competitors.

I have concerns that the ambiguity over disclosure that now exists can unfairly benefit certain types of firms, such as those with a strong Washington presence or influential connections, to the detriment of those smaller or less well-connected firms that may also want to compete on contracts. If the rules on disclosure are not clear, the opportunity for favoritism for certain firms is enhanced, and we are left with an unfair procurement system.

In years past, this subcommittee has devoted much time and effort to the goal of bringing fair competition into our procurement system. Senator Levin and I, for example, were principal authors of the Competition in Contracting Act, which has been successful in enhancing the level of competition in DOD procurement practices. Competition is not fair, however, when the system could encourage contractors to resort to Ivan-Boesky-like tactics of obtaining sensitive information that is unavailable to their competitors. Inevitably, there will always be some that will try to circumvent the system even when we have laws in place that regulate disclosure. The first step in knowing whether the system has been breached, however, is to

have clear rules of disclosure and non-disclosure in place, and to have these rules uniformly applied. In other words, if there are no rules of the road, it is very hard to know whether someone—from either the government or the industry side—has violated the speed limit.

I look forward to working with Senator Levin and the Department in identifying improvements that can be made to the current management of sensitive procurement information and once again commend him for convening these hearings.

Senator LEVIN. Now we will turn to our first panel of witnesses this morning. We will call them in the order that they are listed here—first, Honorable Michael Stone, Under Secretary of the Army.

I would most appreciate it if you could summarize your testimony so we will have as much time as possible for questions.

Secretary Stone?

TESTIMONY OF MICHAEL P.W. STONE, UNDER SECRETARY OF THE ARMY

Mr. STONE. I understand, Mr. Chairman.

I am pleased to be here this morning to represent the Department of the Army. I am not going to read my formal statement and request, with your consent, that it be included in the record.[1]

Senator LEVIN. It will be.

Mr. STONE. Thank you.

And in fact, I will restrict my opening remarks to a very few observations as we begin this hearing.

The release and disclosure of information is a part, of course, of the broader process of procurement. In dealing with procurement, I was struck by your own use of the word "complex," Mr. Chairman, and also Senator Bingaman's use of the word "complex." The procurement process in the Department of Defense is indeed complex, and I am struck frequently by that complexity, and if I could just mention two statistics to put that complexity into perspective.

The Department of Defense annually deals with 15 million contract actions—one every 33 seconds of every working day. And it is indeed a formidable body of procurement actions with which we have to deal. That in turn, it seems to me, leads us to a huge variety of situations which our rules and regulations have to address. Indeed, they do reach the profusion which you mentioned in your own opening statement, Mr. Chairman.

But the complexity of the procurement in the Department of Defense, it seems to me, justifies the large volume of regulations that we have. And they indeed try to deal with that variety of situations.

We have conflicting interests. We have to safeguard the security of the United States, and at the same time we have, at the other extreme, to try to develop release of information which fosters competition in compliance with the Competition in Contracting Act, and which, in turn, fosters the responses that we wish to obtain from vendors in our procurement process.

We have different criteria for release of information, which again has to reflect that wide variety of situations. We are constantly reviewing the documentation that provides for the release

[1] See p. 62.

of information. In the Army, we had an extensive revision at the beginning of 1988 of one of the major regulations affecting the conduct of government personnel during the procurement process—that was Army Regulation 600-50, "Standards of Conduct"—and of course, all the services including the Department of Defense as a whole are going to be updating their regulations in response to the legislation that was enacted last year, relating to the Office of Federal Procurement Policy.

So we are constantly looking at this issue and welcome the opportunity to be with you today to discuss it.

That concludes my opening remarks.

Senator LEVIN. Thank you very much, Secretary Stone.

Next we will hear from Larry Garrett, Under Secretary of the Navy.

Secretary Garrett?

TESTIMONY OF H. LAWRENCE GARRETT III, UNDER SECRETARY OF THE NAVY

Mr. GARRETT. Thank you, Mr. Chairman, Members of the Subcommittee.

I, too, welcome the opportunity to join Mr. Welch and Mr. Stone this morning to discuss and review with you the issues relating to disclosure to private industry of Government procurement planning information.

I have a brief version of my formal statement and ask that the formal statement be included in the record.[1]

Senator LEVIN. Thank you; it will be.

Mr. GARRETT. As we have reviewed the Department of Navy policies and procedures in this area, the first thing that has become very clear to me, and it is obviously clear to everyone in this room, is that the regulatory framework under which we operate for the safeguarding of inside information is both vast and complex. It comprises, clearly, of statutes, Government-wide, and Department of Defense directives and instructions, and our own Navy regulations and instructions and command policies.

This framework has evolved over a long period of time. Nevertheless, I believe our existing framework does reflect certain general principles which balance the Government's interest as a customer in the defense marketplace with the interest of defense manufacturers. In order to understand those principles which do and should govern our regulatory scheme, we should review briefly the extent to which the interest of the Government customer and its industrial suppliers are common and the extent to which they diverge.

Because of the nature of the defense marketplace, with its enormous resource investments, extended research and development efforts, and lengthy periods required to get complex weapons systems into production, Government and industry share an interest in the affirmative provision of sufficient information, relevant information, regarding the Government's future needs to enable industry reasonably to plan to meet those needs.

---

[1] See p. 72.

However, today, the defense marketplace is a competitive marketplace. And the corporations which choose to compete in it have obligations to their shareholders which inevitably create some tension with the public obligations of the Government to meet the interests of the American people.

In disseminating Government planning and procurement information, the Government's needs as a customer to share information with its suppliers is constrained by at least 4 basic requirements—one of which Mr. Stone mentioned, and that is to protect the national security against release of information that would unduly benefit potential adversaries—second, to protect the integrity of the deliberative and decisionmaking process within the Executive Branch, and most particularly the integrity of the process by which the President's budget is developed; third, to protect the integrity of the competitive process itself; and fourth, to protect sensitive proprietary information submitted to the Government by private industry.

These needs are, I believe quite frankly, somewhat divergent from the needs of those who compete in the defense environment. At the same time that industrial suppliers seek information to better enable themselves to meet the Government's each supplier also seeks information in order to influence those needs and to gain advantage over its competitors.

This is by no means necessarily improper. Indeed, within the limits of the law and the regulations, marketing and information-gathering activities of private corporations are absolutely indispensable to the proper fusion of the Government's requirements and the industry's capabilities.

Nonetheless we must always be alert to the fact that the interests of Government and industry are not always the same. How, then, does our regulatory scheme balance these competing interests?

First, in my view, and foremost, by releasing vast amounts of information through clear, official channels. These include briefings for potential competitors with regard to particular requirements, seminars, speeches, and briefings at trade and professional associations; testimony, such as here today in open Congressional hearings by departmental officials regarding the particulars of the President's budget and the Navy/Marine Corps programs; annual publication, through the Competition Advocate General of long-range acquisition estimates, a copy of which I would be happy to submit for the record.

Senator LEVIN. Thank you.

Mr. GARRETT. Also, circulation of draft specifications and draft requests for proposals to potential offerors for comment; and finally, responses to specific requests from industry, through the Freedom of Information Act, and through informal requests.

Concurrently, our rules also balance these interests by restricting dissemination at certain times of certain inside information. For example, certain Navy planning and budgetary information, like that of the other military departments, is classified because of the harm to the national security which would be posed by its release to potential adversaries.

Moreover, as military department submissions associated with preparation of the President's budget, it may also be properly withheld from distribution outside of the Government under OMB guidance, in order to protect the integrity of the planning and budget process itself.

Much information more directly pertaining to acquisition may be released either generally or on a case-by-case basis when it is in the Government's best interest to do so. Information pertaining to Navy needs and requirements, such as justifications for major system new starts and approved operational requirements, may, with appropriate approvals, be released to contractors or potential contractors having any security clearance that may be required with a concomitant need to know.

Information pertaining to particular procurements is governed by a number of regulations, as we all know, and may be restricted from release for a number of reasons. For example, such information may be restricted because of its security classification or other data pertaining to sensitive technologies; because it incorporates financial and budgetary data pertaining to the program which, if known to potential offerors, might place the Government at a disadvantage in obtaining the best price; also, because it contains sensitive proprietary information subject to the Trade Secrets Act or other restrictions; because release might compromise the Government's interest in the independence and the objectivity of its own internal decisionmaking processes, or because release prior to source selection might compromise the integrity of the competitive acquisition itself.

Now, with this background in mind, Mr. Chairman, if I may turn to the three specific questions raised in your letter of invitation to this hearing.

First, in my view, our existing rules and regulations, taken together, do provide adequate guidance for our personnel and for contractor and consultant personnel who are interested in complying with them and take the time to do so.

A separate but related question is whether our personnel have sufficient working familiarity with the many sources of guidance that we have in this area to enable them to apply that guidance properly and consistently, given the many competing demands that they face.

Allegations of improper release of information are infrequent, I believe. As we reported to you, Mr. Chairman, in our letter of December 16th, we have identified six instances where the Navy has instituted disciplinary action regarding our employees for improper disclosure of planning or procurement information during the past 5 years, other than the "Ill Wind" cases.

On the other hand, as I said earlier, regulations in this area are many and complex. Last fall, I asked the Navy Inspector General to review training within our Department regarding standards of conduct and the safeguarding of acquisition information, with emphasis on our major acquisition commands. Based upon that review, we plan to develop a uniform curriculum on these subjects and require mandatory initial and refresher training for all personnel according to that uniform curriculum.

You asked next what problems, if any, the Navy has encountered in monitoring and enforcing disclosure rules and regulations. We continue to believe, based upon what information has so far become available, that the "Ill Wind" cases reflect conscious misconduct by isolated individuals within our acquisition system, and that our personnel generally understand and adhere to existing rules and regulations. As I indicated a moment ago, we are taking the initiative to standardize and extend our training in this area.

We will also dedicate assets from the Naval Investigative Service to our Systems Commands to enhance our investigation of allegations pertaining to the integrity of the acquisition process and to provide additional fraud awareness training support.

Finally, in response to your third question, as we undertake these initiatives, we continue to work with the Office of the Under Secretary of Defense for Acquisition, and the other military departments, to determine any further Department of Defense-wide guidance which may be appropriate. We believe these initiatives will strengthen our ability to balance the legitimate interests of the United States Navy and our industrial suppliers.

Thank you, Mr. Chairman.

Senator LEVIN. Thank you, Secretary Garrett.

Senator LEVIN. Finally, we will call upon John Welch, who is the Assistant Secretary of the Air Force for Acquisition.

Secretary Welch, welcome.

TESTIMONY OF JOHN J. WELCH, JR., ASSISTANT SECRETARY OF THE AIR FORCE FOR ACQUISITION

Mr. WELCH. Thank you, Mr. Chairman.

I also have submitted a longer and more complete statement, which I would like included in the record if I may, please.[1]

Senator LEVIN. Thank you. It will also be made part of the record.

Mr. WELCH. Thank you.

Although perhaps repetitive of some of the things my colleagues have said here this morning, I would like to hit on a number of issues that really drive the process as far as we are concerned and in fact, define in a little different way some of the complexities.

It is straightforward to say that we must have an open, fair and effective procurement system. Furthermore, it has got to minimize any opportunities or motivations for unfair advantage.

I think we can all agree that it is a non-homogeneous process. The complexity of the process, though, must be explained to the point that in defining the various regulations and rules that we have, that by virtue of increasing or requiring excessive documentation, particularly on the low-dollar/higher-volume end of the spectrum, that we do not reduce competitiveness and limit opportunities particularly for small and disadvantaged businesses, which was one of the objectives when we started out.

We are trying to strike an appropriate balance. While we want clear and enforceable laws, policies and regulations, we also want efficiency, latitude for exercising sound judgment, and reliance on

[1] See p. 84.

the demonstrated knowledge and integrity of the overwhelming majority of our acquisition personnel.

Perhaps it is useful to take a moment and look at what we would talk about as three segments of the procurement process. These segments vary in length, overlap to some degree, and may involve different players and multiple iterations.

The first segment is from the beginning of an identifiable operational need, through the initial budgeting and funding, up to the point when documented efforts begin on developing acquisition strategies and plans. This segment can cover many years and involve a large number of participants from diverse elements of both Government and industry. This segment is not, probably cannot and should not be as tightly legislated and regulated as later stages of the process.

During this part of the process, we have tried to be as open and communicative amongst all participants, whether it be industry, the users, the testers, the supporters.

Industry does need information on our plans in order to be responsive and in order to make investment decisions for their own as well as Government resources. They want to know as early as possible, with as high a degree of confidence as possible, what we will require and when we will fund it. This needs, however, to be balanced against the Government's need for an objective deliberation in our decision processes, without excessive interference or influence by those with vested interests.

The Government clearly is trying to supply the same information to all potential contractors at the same time. As we examine our policies and procedures that apply to this early segment, we are continuing to look for opportunities to increase openness and make the maximum information available to those with appropriate clearances.

The second segment of this process is when we begin the formulation of acquisition strategies and plans. I believe that this part of the process is covered adequately by a combination of Government-wide, DOD-wide, and Air Force policies and procedures.

However, in crafting optimum acquisition strategies and plans, the Government must have the open, candid and confidential advice of its best experts and must be free to discuss and document all possibilities and use information that should not be released to potential competitors.

Industry desires early drafts of documents that they will eventually receive. The Government needs to avoid premature and confusing public disclosure. So how we handle drafts is a significant problem.

Information restrictions in this part of the process, I believe, are generally sound and well understood. However, I believe we must continue to examine our rules with a view to reducing the value of, and perhaps the market for, the inside information, which is the subject of this hearing. No matter how well this is done, however, there will be a few who seek early advantage even if there is already a clear, measurable event for release to all.

The third segment of this process extends from establishing and appointing a formal source selection organization through contract award and announcement. Our review of Air Force policies and

procedures within the context of the Federal acquisition regulations, the defense supplement to it, and other DOD directives, causes us to conclude that this part of the process is well-regulated and tightly controlled.

I think it has been said several times here this morning, no system can prevent an unethical individual from violating clear laws, rules and confidentiality agreements. However, when the violations during this segment are investigated, we find that the source is almost always honest human error or willful wrongdoing, not the absence of appropriate guidance.

Industry perceives that evaluation plans and standards should be disclosed down to the lowest level of detail. Some believe that all Government cost estimates and funding profiles should be known to the competitors. It must be remembered that Government must be able to assess the discriminators among the various evaluation factors, find the real differences in offerors' understanding and capabilities, and be able to assess cost realism.

Our ability to do that could be obscured by talented, professional proposal writers, whether from within or outside the company, responding to these proposal details as checklists.

As we consider changes to this part of the process, we must not sub-optimize to prevent wrongdoing. We must focus on our real purpose—to select the offer that is the best value to the Government.

Through use of the words, "best value," I think we are hearing the word more, but I believe it has always been the objective of our procurement—best value. When we apply and use best value, we must recognize that we involve many more people in the procurement process, as we look simply beyond price to get the quality, the manufacturing, the technical and other people, and it increases the challenge, then, with the proper way to handle material.

You have asked me to address monitoring and enforcement. I believe that our Air Force personnel are briefed and sign statements concerning conflicts of interest and confidentiality—they sign these statements annually; they have training. And I would certainly agree with the earlier statement that our contracting people are in fact underpaid; not recognizing them in the professional arena, as a professional part of the procurement process, is wrong and needs to be corrected.

Congress has recently tightened enforcement and added civil and criminal penalties in the area of control of sensitive material. DOD is currently working to implement Section 6 of the Office of Federal Procurement Policy Act Amendments of 1988. This section address "procurement integrity," as you all well know, and mandates new information protection requirements.

There are many issues now, however, concerning definitions, timing, and specific procedures and clauses that must be resolved.

In summary, we must not lose the human equation in this process, which must include self-governance. That has got to be the most important factor. I thought it was captured very well in an article by Robert Reich of Harvard University, who recently said in the New York Times,

> When the spirit of the law is disregarded, the letter of the law expands until it claims attention. When the law degenerates into cat-and-mouse games of discover-

ing and closing ambiguities, it loses its moral force, without which no set of detailed proscriptions can ever be detailed enough.

Mr. Chairman, I believe the vast majority of our acquisition people do respect the spirit as well as the letter of the law, and we must continue to rely heavily on their professionalism, integrity, and dedication to excellence.

Thank you.

Senator LEVIN. Thank you, Secretary Welch.

We have been joined by one of the ancient members of this Subcommittee, Senator Pryor.

Senator Pryor, do you have an opening statement?

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. Mr. Chairman, I feel like the ancient mariner today. I am sorry I am late, and I applaud you for holding this hearing.

I think what I would prefer to do, Senator Levin, is just put my statement into the record and then ask some questions about one or two of these contracts. I do thank you once again for holding this hearing.

Senator LEVIN. Thank you.

[Prepared statement of Senator Pryor follows:]

PREPARED STATEMENT OF SENATOR PRYOR

Mr. Chairman, I would like to thank you for holding this hearing. You are examining a very important subject, which is vital to ensure the integrity of the government's procurement system.

Today's hearing looks at the way the government manages or mismanages so-called "inside information," sensitive information not routinely released to prospective contractors. It has become painfully clear that, during the heat of competition for lucrative military contracts, some contractors will use almost any means to get the upper hand, including collusion or even bribery. For example, last year I came across an example of alleged theft of inside information involving a company that will be testifying today, the Textron Corporation.

In 1986, Hank Maloney, a retired Army Colonel and a consultant to Pratt and Whitney Corporation, was alleged to have stolen Army documents containing several hundred pages of detailed proprietary plans for the Army's T800 engine development program. At the time, Pratt and Whitney was teamed with Textron competing against an Allison (GM) and Garrett team for the Army's $1.8 billion T800 contract. Colonel Maloney was the former head of the aviation division of the Army Materiel Command.

An Army investigation was conducted and reportedly dropped. No prosecution was pursued. Colonel Maloney no longer works for Pratt and Whitney; he is reportedly working for the Northrop Corporation.

While this is obviously an extreme case, any taint in this process can cause irritating, damaging, and potentially costly delays, as agency investigations or bid protests impede the final award of the contract. It is imperative that the process engender confidence in both the government and the contractor.

As this investigation of the Department of Defense process has outlined, there are differences between the services within the Department in the way they handle inside information. These differences can confuse contracting officials as they try to decide whether the information can be released and contractors who, for obvious reasons, want as much information about the potential contract as can be gathered. The laws and regulations governing the release of this information are extremely complicated and it is understandable that this confusion arises. Hopefully, we will hear that DoD is taking affirmative steps to clarify these regulations.

However, my interest in the acquisition process, both at DoD and througout the government, focuses not just on the flow of government information to the contractor, but on the flow of information from the contractor to the government. I have introduced legislation which would improve the government's ability to monitor its use of consultants. The bill would require consultants to register and provide infor-

mation to the government to allow contracting officials to make informed judgements about the bidders.

Last year, I was privileged to have Senator Levin working with me on this effort. Once again, I thank you Mr. Chairman for holding this hearing and I look forward to working with you.

Senator LEVIN. We will follow a 10-minute rule here on the first round.

Gentlemen, you have cited us 336 separate regulations, guidelines, policy letters and instructions dealing with inside information, and if volume alone were the test, then the regulations would pass with flying colors. But volume obviously is not the test. The test is the consistency of practice of procurement officials and the clarity of the guidance which you give to your own officials and to contractors who must live by those rules.

Now, judged by that standard, the regulations for the procurement phase of the acquisition process, the phase that comes after the RFP or the solicitation goes out, seem to me at least to be pretty good.

In the pre-procurement phase, however—the one that we are focusing on here this morning and the one that is not subject, as far as we can tell, of the "Ill Wind" investigation—in that pre-procurement phase, before that RFP or solicitation goes out, I see three types of problems with the guidance that the services give.

First, there is confusion over what the rules are. Second, there are unclear rules. And third, there is practice that does not follow the rules. I am going to try to illustrate each of those three problems with specific types of documents this morning.

Now, the first category of document that I would like to address is the Mission Need Statement. Mission Need Statements are put together by each of the three services, pursuant to a Department of Defense instruction, to justify the need to purchase a new weapon system.

Now, since the DOD instruction establishes the format for the Mission Need Statement, we should be talking about exactly the same document for all three services.

Secretary Stone, the Army says in its letter to the Subcommittee, that "interested members of industry are provided the opportunity to review and make comments on Mission Need Statements." I take it that accurately reflects your position.

Secretary Garrett, in the letter which the Navy sent to us, it says that "a Mission Need Statement may be released to contractors." I assume that that accurately reflects the Navy's position.

But, Secretary Welch, the letter that the Air Force sent to this Subcommittee says that Mission Need Statements are not released to contractors.

Can you explain to me why the Air Force differs from the other services on the question of whether or not the Mission Need Statement can be released to contractors?

Mr. WELCH. The Mission Need Statement is really a summary type of document. The Air Force in its Regulation 57-1 defines in significantly more detail its need and then breaks that further down into a document called a "SORD," which is a detailed operational requirement document. And in fact those documents are

made available to contractors on a need-to-know basis because most of them are in fact classified.

The Mission Need Statement that is referred to in the DOD instruction is a prerequisite document, usually to the Defense Acquisition Board or the Defense Resources Board type of action, and as such it does not really have an applicability. The key documents are Statements of Need and Statements of Operational Requirement documents, and they are made available to contractors.

Senator LEVIN. Well, I am just specifically referring to one document. We can all get lost here in the tremendous number of documents, and that is one of the problems. I want to focus on that Mission Need Statement. Your letter to us says it is not made available; is that correct?

Mr. WELCH. That is correct.

Senator LEVIN. But the Air Force Regulation 80–11 says that "Mission Element Need Statements will be made available to qualified non-Government agencies." You have got an inconsistency between your letter and your regulations.

Mr. WELCH. In the words you use, Mr. Chairman, I cannot argue with you. The content, in much more detail than the Mission Element Need Statement, is contained in the SONs and the SORDs, and they are released. The top document will very often include financial information and other elements that are not releasable, not needed.

Senator COHEN. Would you just specify what the acronyms stand for?

Mr. WELCH. I am sorry. The SON is a Statement of Need which is created by the user. The next level of document below that is a specific Operational Requirements Document, and it is in even more detail, describing?

So certainly, the letter of the question is exactly right, sir; the material that is much better captured and is made more appropriately available to the contractors from the user organization and the acquiring organization. The Mission Element Need Statement is more a Department of Defense document that is used for budgeting and other purposes.

Senator LEVIN. Well, let me go back to the conflict. Would you agree with me there is a conflict between your letter to us which says that Mission Need Statements are not released to contractors, and the Air Force regulation, which says that Mission Element Need Statements will be made available to qualified, non-Government agencies?

Would you agree there is a conflict in those two documents?

Mr. WELCH. Yes, sir.

Senator LEVIN. Okay. Should that conflict not be eliminated, one place or the other—either change your reg, or change your letter to us?

Mr. WELCH. Absolutely.

Senator LEVIN. Which are you going to change?

Mr. WELCH. I will have to look at the regulation you talk of. The material that is most helpful and necessary is in the Statement of Need and the SORD. I would look to change the document with respect to the MENS. However, I must say that we will review the Mission Element Need Statement again, also, to see if perhaps it

shouldn't also be released, even though it is a much less useful and summary document.

Senator LEVIN. Well, the Army and the Navy seem to have a clear position on this. They do not have any conflict between their own documents. And the DOD has a clear position on this, it seems to me. So I do not understand why the Air Force is out of sync with everybody else here.

Mr. WELCH. I think that this is a good illustration, Mr. Chairman, in the sense of the details of the item——

Senator LEVIN. No, I am not talking about details. I am really talking now about—it is very simple to me—you have got two documents. One says Mission Need Statements are releasable to contractors. The other one says Mission Need Statements aren't releasable to contractors. You can get into the verbiage and the subunits and everything else, but that is a very clear inconsistency, and you have acknowledged it. One of them has got to be cleared up—do you know which?

Mr. WELCH. Sir, I said I would have to go back and look, but I would like to complete the statement that I believe that regulation goes on to further say that although it is not handed to contractors, that there is a process through the Defense Technical Information Center that says they can in fact go and get those documents. And I would like to check that for the record.

[Information furnished follows:]

AFR 80-11, last revised in 1981, includes direction to provide Air Force Information for Industry Offices (now called Tri-Service Industry Information Offices) with copies of SONs, MENS (a predecessor of the MNS), PMDs, program element descriptive summaries, and all planning guidance documents. However, the Air Force has not been releasing the MNS since SONs are released to contractors and SONs are the basis for the MNS in the majority of cases. We will reemphasize existing direction to release the MNS, and update both AFR 80-11 and regulations concerned with preparing requirements documentation.

Senator LEVIN. No, that is not what the regulation says. The regulation says that Mission Element Need Statements will be made available to qualified non-Government agencies That is what it says.

At any rate, what you would have to do, once you acknowledge there is an inconsistency in your own documents, it seems to me, then, that you will just have to come back to the Subcommittee, tell us which document you are going to correct.

Mr. WELCH. Yes, sir.

Senator LEVIN. One of them is wrong. That is the whole point, is that one of them is wrong, one of them needs to be changed, and you can tell us which one. All I am telling you is that the Army and the Navy have no such problem here. They are very clear. This material can be made available. That is the DOD policy, by the way. And the DOD has a common format, because the Mission Need Statement is put together pursuant to a DOD instruction.

So we have got here a common instruction; each service has the Mission Need Statement; two of the services follow the rule, which is the correct one, I think, intended by the DOD, that it be made available to contractors. The third service does not. Let's just leave it at that. You will let us know which one you are going to correct

and why, okay, because I want to go on to something else, and my time is running—my time is up.

Senator Cohen?

Senator COHEN. Mr. Stone, I agree with the statement that you made that you can never devise a leakproof system, a system not subject to the limits of positive law. But we can point, I think, to almost all the documents that are under discussion today and maintain that the Army has few, if any, document-specific rules governing disclosure.

My question is, do you think we are creating a system of confusion to both industry and Government personnel about what types of disclosure are proper and which are not?

Mr. STONE. Senator, I am sorry—can I ask you to repeat the question?

Senator COHEN. You said before that we cannot devise a leakproof system. But my understanding is that regarding many of the documents we are discussing today, the Army has very few, if any, document-specific rules governing their disclosure.

Mr. STONE. If I did say that, or if my formal statement said it, I would like to revise it. I feel we have a very comprehensive system of regulations that are given to our procurement people for their guidance in this matter.

Senator COHEN. You state at the end of your testimony that, "We have to be able to clearly define that information which must be protected for the integrity, equity and efficiency of the system." In the case of acquisition plans, all of the services say that these are not available to contractors. The Army has directed that they be designated "For Official Use Only," and yet these "For Official Use Only" documents are in fact released to contractors. And the industry maintains that there is some uncertainty. They maintain that there is a great deal of confusion as to whether that is available or not available.

So how do we ensure that the information is protected if it is protected only with this stamp, "For Official Use Only"? What are the rules and the guidelines for that stamp? What does it mean?

Mr. STONE. I do not really have any comments I can make on that without looking at a specific example of what a contractor would cite as an example of the confusion that is in his mind.

Senator COHEN. Well, if we have a stamp that says "For Official Use Only" on an acquisition plan, does that mean it goes to contractors or not?

Mr. STONE. It can be released as "For Official Use Only" under certain specified conditions.

Senator COHEN. And are those certain specified conditions applied uniformly, or are they applied on an ad hoc basis?

Mr. STONE. Regulations that provide for the release of FOUO documents are tabulated and are available in official guidance. Whether the guidance is universally applied throughout the range of situations that come up in these matters, I cannot guarantee; and that is maybe an example of what I was talking about in terms of not being leakproof.

The consistency of the application of the regulations is something that we are trying to improve, that we are constantly looking at,

but I cannot guarantee to you that it is universal and is universally consistent.

Senator COHEN. Okay.

Mr. Garrett, let me just turn to you quickly. You were very explicit that budgetary information, for example, that are contained in project objective memoranda and project element descriptions should not be disclosed to contractors; and yet a majority of the industry representatives who were interviewed by this Committee not only felt that they should be disclosed, but confided to us that they are often made available. Indeed, representatives of the Department of Defense informally admitted that these documents are in fact made available.

How can you have such a disparity between proper and actual disclosure policies under these circumstances?

Mr. GARRETT. That is a very difficult question to answer, because there are so many variables, I think, Senator Cohen, that come into play here.

I have been in the Department now 3 years, and have dealt with several POMs, both DOD as well as the Navy POMs, and I would have to say, given my experience dealing with the POMs, that the playing field changes so frequently that if anyone wants to rely on a POM, he does so at his own peril.

But my own view is that any of the documents, such as the program objectives memoranda, and the issue papers that are issued in conjunction with the internal processes within the Department of Defense as we struggle to put together a rational plan for procurement of weapons systems, should not be released to contractors.

Now, the fact that they get them, I have a difficult time explaining why or how they may get them, but——

Senator COHEN. Do they get them as a result of having access to insiders; is it an informal policy that those charged with maintaining the integrity of those documents feel they have the discretion to release them from time to time, given who the contractor is? What I am trying to determine is the basis for the release. Is it because we are not enforcing your belief that these documents should not be released, or is it because there is an understanding within the system that these ought to be made available, and we do it on an ad hoc basis? Or is it because some people buy into the system? What is the reason, in your best judgment?

Mr. GARRETT. I regretfully cannot specifically answer that question. I cannot speak for those who would release the documents when in fact, as you know, in the Department of the Navy, certainly, and I believe in the other departments, as we go through this process, those documents are not to be released.

However, as you know, it is a very long process, as Mr. Welch pointed out, and it changes daily and sometimes hourly. Many pieces of paper are distributed within the building, and I assume that, based on my experience to date, there are some people who will not comply with the regulations. And that is, I assume, how the documents find their way into arenas where they are not intended to be.

Senator COHEN. You see, the difficulty is with the lack of specific guidelines or understandings as to, under what circumstances, by

whom, and how this information can be released, this creates a great deal of confusion. It lends credence to the industry's claim that disclosure is sort of "catch-as-catch-can." We do not know exactly what we can do and cannot do, and we are going to do the best we can for our company under these circumstances, which is kind of open field running; and if we can get somebody in there and get it, then we are going to run with it. That is part of the problem.

I will give you an example. The industry contends, and I think it is buttressed by the fact that when it comes to documents like Statement of Need, Statements of Work—I guess we call them "SONs" or "SOWs," the Air Force contends the information in these documents should be available, the Navy says sometimes it should, and the Army contends it should not be. So we have three different interpretations about availability of Statements of Need and Statements of Work.

In one interview, an Air Force official contended that regarding the SON or the SOW stage of procurement,"I don't think we have information that we don't want the contractors to have."

So what is to be the policy between the Air Force, the Army and the Navy under these circumstances about the availability of these document?

Mr. GARRETT. Well, let me say, if I may, out of every cloud there is a silver lining, Senator, and I think at least, certainly, in the last 3 years in the time I have been in the building, one of the silver linings has been the creation of the Under Secretary of Defense for Acquisition which, of course, was the product of the recommendation of the Packard Commission and the Congress.

I observed the Department before from my position as General Counsel where we did not have a coming together, if you will, a central focal point. And since that position has been created, we have found ourselves, the Navy, the Army and the Air Force, I think, working far more closely together. And I think that this is one of those areas where we will have to continue to work together to develop consistency to the degree that we are able—and I do not necessarily believe that uniformity across-the-board, in lockstep, is the answer. But that is what we must do.

Senator COHEN. Let me respond to that. As a matter of fact, at the close of your statement, you indicate that an abstract desire for uniformity in reaction to the differences in practice by the various services would be a weak reed upon which to base reform. So if that is the case, could you briefly characterize the justification for the differences in the acquisition process, let's say, between Air Force, Navy and Army. What is the case to be made for differences at this level of acquisition between the services?

Mr. GARRETT. Well, I think the differences in the processes, if you will, should necessarily be limited and should be uniform where they are capable of being uniform. But for example, in the Navy, our procurement processes cover a very wide scope, if you will, a very wide range of acquisitions. We are, I think—with the exception, possibly, of the Army, Michael; they do buy some boats—the only department that procures ships, for example. Therefore, I think that is certainly going to explain a difference in the procurement of those particular assets.

Senator COHEN. It would make no difference in terms of whether you are going to procure a B–1 bomber or whether you are going to procure an aircraft carrier, in terms of the way in which the regulations are laid out for the disclosure of certain documents, Statements of Need, Statements of Work, and so forth.

Mr. GARRETT. Well, I think I prefaced my statement that there are certain areas within which there can be uniformity. And where there are, Senator, I would agree with you that there should be, and that was the point I was making with reference to the USDA, Dr. Costello's office, providing, I think for the first time—and it has only been going now for a couple of years—the opportunity for the services to have one central focal point where we get together and we address these issues, and we are addressing them, and I think in time you will see uniformity.

The silver lining in this cloud is the fact that you and the Chairman, through focusing in on this area to the degree that you have, have focused on the continuing need for a central focal point. And I think that is a very productive thing, because I think we do need to work on these issues, and we shall.

Senator COHEN. Thank you, Mr. Garrett.

Mr. Welch, unfortunately, I will not be able to focus upon you during this round.

Thank you, Mr. Chairman.

Senator LEVIN. Senator Bingaman?

Senator BINGAMAN. Let me ask along the same line of questions that Senator Cohen and Senator Levin were asking--with regard to document release policy, as I understand it, the testimony is that we have a comprehensive set of regulations, instructions and directives in each of the three services, governing this issue of document release.

In addition, the Department of Defense has regulations and directives with regard to the release of documents, as I understand it—separate and apart from the ones that the services have. Is that accurate?

Mr. Welch?

Mr. WELCH. There is a hierarchy of documents that flow down from Department of Defense directives and get captured with regulations, yes, sir.

Senator BINGAMAN. Well, I think we have all commented on the confusion that exists. Obviously, one way to reduce confusion is to simplify. And it would seem to me that it would be a major step forward to essentially have a uniform set of regulations that would govern the release of documents, service-wide, not just in each service, but DOD-wide.

I have difficulty—and I understand that the Navy buys ships, and the Air Force buys airplanes—but I agree with Senator Cohen's comment that that should not be an adequate basis for requiring different release of documents, or policy on releasing of documents. I have difficulty understanding why the purchase of a different object should change the policy on releasing of documents.

Mr. GARRETT. Senator Bingaman, I guess I misunderstood the thrust of Senator Cohen's question. I thought he was talking about the procurement process as opposed to the releasability of documents. I think that is one of those areas that covers the universe,

whether it be the Army, Navy and Air Force, or DARPA, or the other defense agencies, where you can have uniformity. And I think we do. We are all governed by the FAR, the Federal Acquisition Regulations; we are all governed by the DFARS. And we put into practice those regulations.

Now, maybe we have not done it with the clarity that we should. And to be very frank with you, as the Navy's Under Secretary, I have not focused on these differences among the Air Force and the Army and the Navy regulations. Maybe we should—I think it is high time that we do—and to simplify.

Senator BINGAMAN. Well, do each of you agree that uniform policy with regard to release of documents makes sense in all the services—there is really no justification for a different policy with regard to the release of documents?

Mr. GARRETT. Certainly the Navy would, Senator.

Mr. STONE. I would agree with that, Senator. As an objective, I think that is a worthwhile one to pursue.

Senator BINGAMAN. Well, let me go one step further and ask why, if we should have a uniform policy with regard to release of documents throughout the Department of Defense, why do we need to have a comprehensive set of regulations in each service to implement what has been agreed to at the Department of Defense level? If the Department of Defense—and I am jumping ahead a little bit to Dr. Costello's testimony here, that he has a working group which has representatives from each of the services, and the Defense Logistics Agency, and Acquisition Comptroller of Personnel on the DOD staff who are reviewing the documents, and he expects that at a minimum this group will publish a clear and comprehensive statement of DOD's disclosure policies in a single document.

Now, I understand that, regardless of how clear and comprehensive that statement is, it may still be that it needs interpreting—but why can't that be done at the DOD level? Why can't all of the written explanation and directives about what can be released in the way of documents be done at the DOD level and implemented service-wide? Why do you need a comprehensive set of regulations, instructions, directives, et cetera, in each service?

Mr. STONE. Senator, let me take a crack at that first, if I may.

Perhaps I can pick up a word that has been used by each of my colleagues here and develop that a little bit in response to your question.

First of all, I would pick up Larry Garrett's point about the functions of the Office of the Under Secretary of Defense for Acquisition. I think that is one of the initiatives that Dr. Costello has developed in the last year and a half, and we are looking at the rationalization of documentation throughout the procurement process. In particular, there are documents called the "SARs", the selected Acquisition Reports, which get submitted to Congress quarterly. We have just concluded a major review of that body of documentation to see if we cannot get greater uniformity and consistency between the services.

So we are moving on it, and I think, as Larry said, perhaps we have not pursued this one as much as we should, but I think it is a worthwhile objective.

The second comment I was going to pick up was Secretary Welch's point about the hierarchy. The document I have in my hand—Senator Cohen has returned now, and in his second round, perhaps I will say something more about this document—but this is an Army regulation that was published pursuant to the passage of the Freedom of Information Act back in the early part of the decade. It is the Army's development of the Freedom of Information Act. I would suggest that there are comparable documents in both the other services. I would further suggest that if you read those two documents, the Air Force document and the Navy document, there is a considerable degree of uniformity between them.

Your question would be why do you need three, and I think it is a sensible question, and I think it is the sort of thing that we ought to try to rationalize.

Senator BINGAMAN. My question is twofold—first, why do you need three; but secondly, why did the services have to promulgate anything at all? I mean, I understand historically why that has occurred—but now that there is an Under Secretary for Acquisition, why doesn't the Under Secretary for Acquisition promulgate a regulation on the Freedom of Information Act implementation in the Department of Defense, and then that is a DOD-wide regulation—and you guys just revoke yours?

Mr. STONE. I think that is exactly what will happen, Senator, under the OFPP legislation that was passed last year, and I think all three of us have mentioned that. We are in the process now within the building of conducting a review—actually, the review is first of all being conducted, I think, by OMB—where is it——

Mr. GARRETT. At OFPP.

Mr. STONE [continuing]. And then will come to the Department. And I think that the Under Secretary of Defense for Acquisition will indeed issue the regulation by which we then are responsible for enforcing the OFPP regulation. And there should not be any need for the services to issue separate regulations, other than to incorporate what we get from OSD.

Senator BINGAMAN. And that is your view also with regard to this document release policy, that if you could agree upon a uniform Department of Defense position on release of documents, there would be no need for the services to issue their own set of regulations in that respect—they could be issued at the department level?

Mr. STONE. I would just repeat what I said a moment ago, Senator—I think it sounds like a very worthwhile objective to me, and I see no reason why we should not pursue it.

Senator BINGAMAN. It seems to me it would certainly simplify the job of somebody who was going to go after trying to understand this system. It would just simplify the thing greatly.

Also, I guess there is a statement in here by the Navy that you are going to pursue a uniform curriculum.

Mr. GARRETT. Yes, sir, a training curriculum. We found that we do not have that, and——

Senator BINGAMAN. Would that be across all the services?

Mr. GARRETT. No, sir. It would be across the Navy, sir.

Senator BINGAMAN. Just in the Navy. Now, why don't we have a uniform curriculum for training across all the services and the De-

fense Logistics Agency, and everybody? If we have a uniform regulation one the disclosure or release of documents, why don't we have just on curriculum that teaches everybody in the Department of Defense how to implement it?

Mr. GARRETT. Let me see if I can take a stab at that. I think it is primarily a process of the fact that we have three services, first of all—that is an historical development——

Senator BINGAMAN. I understand historically why we have it.

Mr. GARRETT. Yes. The other is that we do have the Defense Management University of Fort Belvoir, where the Navy sends people, the Army sends people, and the Air Force. There, I think, is a focal point where you can have a uniform curriculum applied across the services.

However, not all of our people in the field, as well as in Washington and elsewhere, will ever have the opportunity to go through any such curriculum. For that reason, then, it is my view that within the systems commands in the Navy and the field activities in the Navy we should ensure, to the degree that we are able, that we have a uniform curriculum so that we do promulgate the policy and teach it to our people.

Senator BINGAMAN. No, I am not saying the services should not do the instructing; I am saying they should. Obviously, that would have to occur in the training within the service. But I do not know why the curriculum shouldn't be the same throughout the Department of Defense, so that anybody who studied in the Air Force would be able to go over and work for the Army and make sense out of what is going on.

Mr. GARRETT. I am not sure that it shouldn't, Senator Bingaman, and that would be, I think, a function of DOD policy. They could establish the curriculum, and we could work together to establish a uniform curriculum and apply it across-the-board.

Mr. STONE. Senator, there is one mechanism to accomplish that already, and that is the Defense Systems Management College down at Fort Belvoir. That is an institution that caters to all three services, both military and civilian employees of the services, and it is also attended, I might point out, occasionally by representatives from industry. And obviously the curriculum there is standard; it is given to all categories of employees at all services.

Many of the courses there are required courses before people are allowed to assume certain responsibilities in the acquisition processes. It is a very fine institution.

Senator BINGAMAN. My time is up, Mr. Chairman.

Thank you very much.

Senator LEVIN. Thank you.

Senator Kohl has agreed to yield to Senator Cohen for a few moments. Thank you, Senator Kohl.

Senator COHEN. I thank my colleague for yielding.

Mr. Welch, you made a comment in your formal statement about an appropriate balance being struck between having clear, enforceable laws, policy regulations, and the procurement system, at the same time providing for continued latitude for judgment by acquisition personnel.

It seems to me that since this is the segment of the procurement process which is not as tightly regulated as the latter stages, it

may follow that the integrity of the entire system demands that the Government and the industry have some kind of a uniform understanding as to what constitutes proper and improper disclosure?

In other words, we have the typical pyramid situation. The superstructure, or the integrity of the superstructure, depends upon the solidity of the foundation, and if there is a misunderstanding or a lack of uniformity of understanding as to what is allowed to be disclosed and not at that initial phase in which you want latitude necessarily to be given, there has got to be some uniformity of understanding about what can go out and what cannot if you are going to have the integrity of the end-product be justified.

I want to give you an example of what I am talking about. In an interview with the Subcommittee staff, an Air Force representative maintained that no particular effort is made to protect the preliminary RFP, Request for Proposal, prior to the formal circulation.

The Army, on the other hand, said that such preliminary documents should not be circulated because they give contractors another intervention point.

Now, how can we have a disparity of either belief or understanding about whether RFPs should be circulated or not, depending upon whether it is Air Force or Army?

Mr. WELCH. I do not believe that there can or should be any difference in the policies on that basis. The use of the draft RPF and, in fact, more than one draft RFP, to encourage the participation of industry, is something recent in terms of the releasability to industry. I believe that some of the documentation has in fact not caught up.

But as soon as a draft RFP has the level of review that makes it in fact a useful document—that is, in the case of, I am sure, all of the services, as a minimum, the program director level—then it is in fact made available for comment.

I cannot comment on——

Senator COHEN. There is no justification for having a discrepancy between the services on that point.

Mr. WELCH. I see no reason for a discrepancy, and I would say that perhaps whomever you were speaking to before maybe was simply not clear on that process——

Senator COHEN. Oh, I think they were clear. They were clear that there is no attempt made to really hold on a close-hold basis the draft RFP prior to formal circulation. So he was pretty clear about that.

Mr. WELCH. Well, I think the point of clarity is that there are points in a chronology of the development of an RFP once it is finished, and in fact, it is put out. Now, people—and I think this is perhaps an illustration of the difficulty we have in responding sometimes—what is a draft RFP? A draft RFP can simply be the outline of that material required in an RFP. And people start filling it out by segments, and it is pulled together. When it is defined as a draft, people can work with it.

I would also say that one of the difficulties when you put out a draft RFP is the people who are going to participate in fact are extremely reluctant to respond, because they feel they are giving away some type of competitive position. And I think this back and forth on the draft—but I think that things are very clear. The

draft RFP came into being to try to dignify and regularize the process of when information would be available and the stature of that information.

Senator COHEN. I thank my colleague for yielding.

Senator LEVIN. Thank you, Senator Cohen.

Senator Kohl?

Senator KOHL. Thank you, Mr. Chairman.

I would like to talk personnel for a second. My background, and I am sure yours, and most everybody's background, teaches that systems are very, very important, and that without systems, you cannot have any kind of a business operation. But systems are no better than the people who implement the system. The best system, without the best people, is not the best system; it is going to be something considerably less.

When I look at the figures, the dollars we spend on procurement in the three services, it is something like $80 billion in the year in which we are functioning, which makes it the biggest business, in terms of procurement, in the world. And it should have the best system, not only mechanically but, I think, people-wise. The citizens of America do not really differentiate between one service and the other. I think they clearly will buy the idea that we have a defense procurement business of $80 billion that should be organized in the best possible way.

We have, I understand, something like 500 odd thousand people who are engaged in defense procurement; and according to the GAO, in 1986, the last year for which they had information, the percentage of program managers for major weapons systems, with over 4 years of experience, is only 30 percent for the Army and the Navy and 54 percent, according to the GAO, for the Air Force.

I think that that statistic alone would indicate that without making any criticism of the morality or the intelligence of the people involved, that a procurement system with that kind of turnover is necessarily a system that is not going to function nearly as well as it should. I think the American people—and I think you would agree—have a right to the best system in the world.

When I was campaigning this year, I said—and I know it is not nearly as easy as I said it during the campaign; campaigns are one thing, and governing is another—we could save 10 or 15 percent in procurement if we just managed to do it in a more efficient and more effective and more professional way.

I would like your comments on that.

Mr. Welch?

Mr. WELCH. From the Air Force standpoint, the Air Force just has to agree categorically with everything you say. We have set about to try and improve that process.

The Air Force has an acquisition career field for military and civilian; you can go all the way to a four-star level in the Air Force and in our acquisition commands. You can go to the top of the Government service, civilian service rolls.

So the first point of incentivizing and wanting to keep people in that career field, we think we have done very well, and we are protecting that.

We have recently, in the last 2 years, formalized the education and preparation of people to take on the major program activities in line, again, with some legislative activities and others.

For instance, we have four levels of training now that go through 17 years of service, through screening boards, including education, and applicable experience, before one can qualify for being a program director on a large program, including attendance at Defense System Management College and other applicable experience.

So it is our intent—and also, we are having controlled tours of people; in other words, they come into the job, and they stay until an appropriate period or an appropriate milestone, so we are not changing people at the time that we have a dynamic going on within the program.

I would hope that the statistics that you quote will show increasing improvement, both in time of service, and in professional education in support of having very, very first class people. And the obvious way to encourage that is to continue to promote military and civilian, those people who have dedicated themselves to the acquisition field.

I feel we have a very good program in place. I think we have seen results already, and I think those results will accelerate over the years.

Senator KOHL. Mr. Garrett?

Mr. GARRETT. Senator Kohl, like my colleague, Mr. Welch, I would have to agree with you. The Navy would take no issue with the premise that you postulate.

The Navy has several programs in place. We unfortunately got started late, for reasons that I cannot explain, but we have developed on the uniform side what we call our Materiel Profession Program. That basically is where we take former line officers, and they transition into the procurement specialty, if you will.

We will have to, over time, grow that cadre of trained people, and the experience to date has been very good. We are selecting as well on the uniformed materiel professionals for flag positions, and so we have developed, I think, a viable career pattern for our military officers to go into—unlike the sister services, the Navy, in our acquisition force, I think, 68 percent of our people are civilian. I think that compares to something like 26 percent in the Air Force and 54 percent in the Army.

I was reviewing some statistics the other day on the Senior Executive Service. We have approximately 300 Senior Executive Service employees in the Department of the Navy, and if you look across the graph, most of them are in their first or second or third year. As you get to the fourth year, we have a substantial drop. And I think of that cadre of people, I have 54 who have been with the Department of the Navy over 5 years. That is not very many. And I think that equates directly to the fact that they are very talented—they are very talented people—they are very capable, and they are very dedicated. They are, however, not recognized in many ways that, in my opinion, they should be. We cannot compete to retain our people in the Navy with some of the private sector opportunities that they have.

So we have a very complex problem and a difficult problem. I think we are working as best we are able to work within the con-

fines that are laid down for us to develop a comprehensive program. But I think much more needs to be done, and as Mr. Welch says, we need to recognize these people, and we need to pay them what the market will bear.

Mr. STONE. Senator Kohl, I will just make two quick comments, if I may, in response to your important observation.

I have been in the Department of the Army now for about 3 years, and I am constantly struck with the excellent level of experience that I find in our procurement staff as I go around the country. And I will give you, if I may, two examples—without trying to insinuate that these examples necessarily are the norm or as good as we could do.

I was in Detroit 2 weeks ago today, and the Army has there one of its main procurement commands called "TACOM," the U.S. Army Tank Automotive Command. I met there with a man who has 30 years of continuous experience in truck procurement. He is acknowledged to be one of the top professionals in this field in the United States, in or out of Government; a really superb civil servant, a member of the Senior Executive Service. He will be retiring in a couple of years after that long career.

To give you an example from the military side, down in Huntsville, Alabama, I met—this was 6 months ago, because he has now retired at the end of his career—a brigadier general who had been for 10 years continuously involved in the same missile program that was run from the missile command at Huntsville, Alabama.

So I think we do have examples of continuity of professional management in the procurement business and professionals who ought to know all the rules relating to procurement, including those involving disclosure of information. And certainly, it is the policy of the Army to encourage the continuity and encourage the professionalism that you are talking about.

Senator KOHL. Thank you, Mr. Chairman. My time has expired.

Senator LEVIN. Thank you, Senator Kohl.

Senator Pryor?

Senator PRYOR. Thank you very much.

This hearing, I think, Senator Levin, is primarily about the flow of information from the Government to the contractor. I would like to reverse this just a moment and talk about the flow of information that I think does not exist between the contractor to the Government. I would like to reverse that river, if I might, for a moment.

I would like to just give you a hypothetical case. Let's say that the Air Force is looking at their long-range activities, and Boeing comes in and says—

We want long-range information. This will enable us to plan and project and give the Department of Defense what it needs, at a better price, and ultimately will save the taxpayers money and improve our defense posture—

Et cetera. Now, at the same time, Boeing, and this is a fact, has retained the BDM Company as a consultant. BDM doesn't come to you; Boeing comes to you.

So you meet with your colleagues, and you say, "We ought to give this information to Boeing and we ought to give it to the other people in the aerospace industry."

When Boeing gets the information, Boeing says, "Okay, BDM, you are our consultant. We are going to share this with you." And at the same time, BDM is working for the Egyptian Air Force, and who knows who its other clients are.

How do you know that when you distribute this information to Boeing that it does not go to BDM, who represents clients with possible conflicts of interest? How do you check that flow of information to make sure it is not getting into the wrong hands?

Mr. WELCH. Well, Senator Pryor, the information you are speaking of is classified, I assume, in the example you are speaking of—otherwise, it is public domain information—so information which may be as part of the planning process, which appropriately is shared with contractors also trying to make their investment decisions, they are governed by the security guide that covers not only the action of the Government, but the action of the contractors and their subcontractors.

So if there is not a specific need to know for the work that the contractor was doing, and in fact, that is restricted to the particular task that he is doing, there should not be a flow-through of data that some foreign government has absolutely no need to know.

Senator PRYOR. Well, Mr. Welch, with all due respect, Boeing may be covered by the security regulations and rules. BDM is not.

Mr. WELCH. If they are a subcontractor of Boeing, it would be included in that subcontract document. Now, you can discuss how people perform to their contractual terms and conditions, but you may not pass classified information through in a subcontract unless the appropriate controls—which are standard for all the Department of Defense—are in fact included. So you may be talking about something which is a straightforward violation, but there are certainly documentation and standards that are involved for that.

Senator PRYOR. Do you support the aerospace Industries Association request that they are about to make to allow them to have more "inside" information?

Mr. WELCH. I think we have had just a short opportunity to try to review what they have put in. In the most part, I believe they are receiving all of the documentation that they talk about, and we are only discussing detail levels of what they need. So I would have to answer your question on a case-by-case basis. Where it is to the level where it is required for them to live up to the individual corporations' public responsibilities and other things with respect to making investment decisions—in other words, how are they going to spend their discretionary resources—but as an example, if pricing information in the sense of the exact price model or cost model that is going to be used in a specific competition for a specific quantity of materials—no, sir, I would not support that at all.

Senator PRYOR. All right. Boeing, Northrup, McDonnell Douglas, and others come to you and say, "We need advance information. We have got to do this for long-range planning." It sounds pretty good. Do you know who these contractors have hired as consultants? Do you know?

Mr. WELCH. No, I would not personally know. No, sir.

Senator PRYOR. There is no way for you to know, is there?

Mr. WELCH. No.

Senator PRYOR. Do you see the point of my questions? I do not know if I am getting through.

Mr. WELCH. I see the point of your questions, Senator Pryor, but I also would say that the ability to share and use information, particularly if it is not information in the public domain, I think the procedures, regulations, policies are very clear, very clear with respect to the Government—although we have had some discussion about that today—very clear with respect to the prime contractors or subcontractors.

Now, if they are not being used or not being followed, that is a different question.

Senator PRYOR. But the consulting firm is not classified, maybe I am wrong, as a subcontractor, are they?

Mr. WELCH. But the terms of consulting agreements that I have seen always address themselves to classified, proprietary material.

Senator PRYOR. But the information that you may be sharing with—I have just received a note here that says my time has expired——

Senator LEVIN. Go ahead and finish the question.

Senator PRYOR. Thank you.

My point, Senator Levin, is I believe when we give information to the contractors that we have no idea who does their consulting work, and it is all one, big conglomerate out there and we do not know who they are, and more importantly, we do not know whom they work for. Yet this information goes out, and it can flow down to the second and third level tier of consultants, who are working for other governments, and you do not know who those other people are and how many sides of the street they are working.

Mr. WELCH. But I certainly know the distribution of where the material went in the first place, and the documentation and controls that covered that, and that that documentation and control is implied and directed toward wherever they might use it. So I do not know whether they are complying or not, other than through the local activities and the audits that are done, which would tell us if they are not complying.

But we certainly know when it is released—if it is a classified document, the actual release of that document is recorded and can be audited, and is audited.

Senator PRYOR. Mr. Welch, I thank you.

Mr. Chairman, thank you.

Senator LEVIN. Thank you, Senator Pryor.

Before I return to my questions, which are aimed at showing the conflict between the services, indeed the confusion within the services, relative to the disclosure of information, I think it is clear from what you have already said this morning that you are willing to work on one set of rules relative to disclosure of this information.

Is that true—do all the services agree that they will work to create, with the acquisition chief, USD(A), one set of rules relative to disclosure of information, so that we can cut those thousands of pages of regulations at least by two-thirds? Will you folks give us that commitment this morning?

Mr. GARRETT. As to the policy on disclosure, Senator, that would be directed by USD(A)—I assume it is the Secretary of Defense—certainly, the Navy will work with the Secretary.

Senator LEVIN. For one set—so we can eliminate two-thirds of this stuff—so that people who want to know what is the rule relative to the disclosure of a POM can go to one rule, and that will cover all three services—for instance—I am using that just as an example.

Mr. GARRETT. The Navy would have no problem with that, Senator.

Senator LEVIN. The Army?

Mr. STONE. I have already given that commitment, Senator.

Senator LEVIN. I know you have, but I just want to make sure, because for some reason we just keep drifting. We have got three services, we have got three sets of rules. Frankly, within each services we have conflicts, but I will get to that in a minute. But just so long as we can have that assurance, because there is rivalry between the services still; we did not wipe that out with Goldwater-Nichols.

Mr. GARRETT. There should be no rivalry on these issues.

Senator LEVIN. Or differences.

Is there any reason to have differences relative to the policy on the release of information, the disclosure of information, in this stage of the procurement proceeding? Do you see any reason for any differences between the services on this?

Mr. WELCH. Mr. Chairman, I specifically do.

Senator LEVIN. Okay.

Mr. WELCH. You have just, in fact, told us two things—policy and rules. There is absolutely no disagreement on policy, absolutely.

Senator LEVIN. Okay. Now, why should there be a different rule for the disclosure of a POM, between the Air Force and the Army and the Navy?

Mr. WELCH. A POM is in fact a Department of Defense document, and there should not be any difference——

Senator LEVIN. I understand. Can you give me what document there should be a different rule on relative to the disclosure? Can you give me an example?

Mr. WELCH. I would have to, sir, go over and look at the other services' rules to answer that kind of question, and regulations. But in the sense of marching down through the documents, if it were presumed that each had exactly the same title and purpose as the POM does, which you referred to, then the answer to your question would have to be yes.

Senator LEVIN. All right, so long as we are talking about the same document.

Mr. WELCH. Yes, sir.

Senator LEVIN. Okay. And Mr. Stone, you would agree with that.

Mr. STONE. Right.

Senator LEVIN. Okay. Now, let me get back to this Mission Need Statement; I have gone over that with you, Mr. Welch, and I want to now go to the Army.

The Air Force is not alone, Mr. Stone, in the confusion relative to whether or not the Mission Need Statement should be made available to contractors. We interviewed an experienced Army pro-

curement official who represents the Army on the DAR Council, serves as the Army Action Officer on the "Ill Wind" investigation, and he told the Subcommittee staff last October that his understanding was that Mission Need Statements are not available to contractors.

I will just simply state that as a fact, to let you know that the confusion is not exclusively the Air Force's on this—without naming names or whatever—that is not important. The point is that that kind of an experienced procurement official, talking to the Subcommittee staff, came to a different conclusion relative to the disclosure of Mission Need Statements than the Army regulation on it.

Let me now move to a different type of a document—acquisition plans. This is, as I indicated, a different document from the Mission Need Statement. The acquisition plan that I want to focus on for a minute details the services' integrated approach to a procurement, including what to buy, how to buy it, and who the responsible officials will be.

In your written response to the Subcommittee, you all state that acquisition plans are not released to contractors. That is the position of all of the services—and if there is any difference with that, let me know right now.

Now, first, Mr. Stone, you state that the Army's position on this issue is set forth in a particular regulation, and that regulation governs documents that are marked "For Official Use Only." That is the basis for your conclusion that acquisition plans are not made available to contractors.

And Mr. Welch, you state, in reaching the same conclusion, that acquisition plans are marked "For Official Use Only" or with appropriate higher classification markings, and that release of such information is dependent upon need-to-know and applicable classification procedures.

So basically, what the services are focusing on, relying on, for the conclusion that acquisition plans are not made available to contractors, are the FOUO, the "For Official Use Only" regulations.

Now, here is the problem with that. DOD regulations expressly state that FOUO, "For Official Use Only" documents, may be disseminated to DOD contractors. So we have got two services—and I am not sure, frankly, of the Navy's basis, so I am leaving you out for the moment, Mr. Garrett; I'd rather just leave the Navy out of this for a minute and just focus on the Army and the Air Force. Two of the services say that document, that acquisition plan, cannot be released to the contractors. You base it on the policy about "For Official Use Only," and the DOD policy on "For Official Use Only" says that "For Official Use Only" documents "may be disseminated to DOD contractors".

Now, let me just tell you what our own staff people have learned from your people about FOUO rules. The Army procurement official that we interviewed said that FOUO rules are open to interpretation. The Navy official said, "I don't think the marking itself carries any meaning." The Air Force official says he's not sure what the standard is for disclosing FOUO information.

One of the contractor representatives whom we talked to said he didn't have the foggiest idea what FOUO stamp means with regard

to industry access—that is what we are talking about now, industry access.

Our industry witnesses today say that FOUO information should be and is properly exchanged with interested contractors, and that the FOUO marking clearly permits disclosure to the contractor.

Folks, we've got a problem. Putting aside the solution for a moment, we've got a problem, because there's a whole lot of types of documents which are marked "FOUO" and that means to the industry, and to many of your own folks, that that means they are disclosable to the industry. And yet when we ask you—just take one example—the acquisition plan, is it disclosable—at least two of the services say no, you cannot disclose that. Why? Because that is marked "FOUO." That simply is not going to fly. There is a conflict there.

My question to you is this. Do you not believe that it would be helpful to have regulations—one regulation, I would hope—which states when FOUO documents may or may not be disclosed to contractors? That is my question.

Let me start with you, Mr. Stone.

Mr. STONE. Let me say first, Mr. Chairman, that I have used the last few minutes to scan very quickly the Army's regulations governing the marking of and the release of and the dissemination of and the safeguarding of—I have not read it word-for-word, obviously, but I have looked at the general outline of all of those subheadings relating to "For Official Use Only" regulation, and it is included in a document which is universally used in the procurement business in the Army. It is available to all of our procurement people. I think it gets back to an answer which I probably did not make as effectively as I should have to Senator Cohen.

We cannot devise a leakproof system, and there is language in here that provides explicit guidance. My quick look at it leads me to the conclusion that I concur with your observation. It ought to be clearer than it is, and I think it is an opportunity for us to try to do something in coordination with the other services so we have a consistent policy here, which would again address some of the other questions that you have raised.

Senator LEVIN. All right.

Mr. Garrett?

Mr. GARRETT. Mr. Chairman, first, if I may, I think the Navy's position in answer to your question was that we believe acquisition plans, again, in whole or part, may be released under the provisions of the Freedom of Information Act.

Senator LEVIN. That they may be released.

Mr. GARRETT. They may be—may not be—it depends on whether or not any of the exemptions apply. That is my understanding essentially of what "For Official Use Only" means.

Senator LEVIN. Well, this is the difference here between the services, because the Navy say they may be; the Army and Air Force say these acquisition plans may not be. This is another example here of the conflict.

Mr. GARRETT. Well, that is our position.

Senator LEVIN. I understand your position.

Mr. GARRETT. I would not disagree that one policy as it relates to the treatment of "For Official Use Only" documents would seem to

make sense, and essentially I thought there was one policy as it relates to the law.

Senator LEVIN. Mr. Welch?

Mr. WELCH. I would have to return also to the Freedom of Information document. In the Air Force, "For Official Use Only," when it says "may," directs, I believe, to Air Force Regulation 12-30, which says that FOUO is defined as, in quotation marks, "information that has not been given a security classification according to an Executive Order, but which may be withheld from the public for one or more of the reasons cited in the FOIA exemptions." I think that is the reason that you see the "may" in there. The baseline of all of these and the common element that perhaps you are seeking from us is the Freedom of Information Act, and the real question has to do with training and communication as we come back to the people. I think it was commented that there are perhaps half a million people involved in the procurement business, and I think we have very well demonstrated to you here today there may be some questions in those people's minds as to what exactly all the regulations are.

Senator LEVIN. Well, it is not "may be;" I mean, what is the guidance on the acquisition plans? It is not a question of "may be" some confusion. There is confusion. I have just told you what these procurement people tell us. "FOUO rules are open to interpretation"—the Army. The Navy says "I don't think the marking carries any meaning." The Air Force says he is "not sure what the standard is" for disclosing.

All I can tell you is what the DOD standard is itself, which is that FOUO can be disseminated. I mean, folks, if you have got a DOD standard that says FOUO may be disseminated, you cannot stamp something "FOUO" and say that that is the reason it cannot be disseminated. Two of the services have pointed to that marking and said that is why these documents—let me tell you, this is one of 10 types of documents, at least, that I know of, that are marked "FOUO" in this procurement process. We have two services that point to that stamp and say it cannot be released; that is why the acquisition plan cannot be released.

All I am telling you is that DOD and your own description of FOUO says you can share it. And I am also telling you this stuff is shared, and your own procurement officials say it is a completely vague standard.

Now, you have got a problem. I think the best thing to do is what you have done, basically, Secretary Stone—acknowledge there is a problem, just simply, because there is one. We might as well acknowledge it.

There is a logical inconsistency to me. I am not looking here at the Navy. I think the Navy is consistent with the DOD standard, because you have said these documents "may be" released.

Mr. GARRETT. But obviously, I have one official who is confused.

Senator LEVIN. Yes, you have one official who is confused—by the way, I have got to tell you while Dr. Costello is here, listening, his statement this morning is marked "For Official Use Only." [Laughter.]

A note of levity here. Putting that aside, I am just telling you that in the real world out there, there is confusion. And we will

have the industry people tell us, your own people have told us—I think you know there is confusion. What I am telling you is there is a logical inconsistency which has helped create the confusion which is, you are pointing to the stamp, "FOUO", on this document as the reason why it is not releasable, and the DOD standard for FOUO says it is releasable.

Now, that is a fairly basic conflict. That is not too subtle or complex for most of us to understand. So, can we get together and do something about this, to either correct the definition of "FOUO", or not to point to that current definition as the reason for refusing to disclose documents? It is one or the other. We have got to do something here.

Mr. STONE. Mr. Chairman, I am not going to recant. I have said that we've got a problem, and there are ambiguities here.

Let me, if I may, read one sentence from the Army regulation that provides for the release of FOUO information. The quotation is as follows: "FOUO information may be disseminated within DOD components and between officials of DOD components and DOD contractors, consultants and grantees to conduct official business for the Department of Defense."

So we can release acquisition plans if they are stamped "FOUO;" we can do that. But—and this is where I don't recant—in looking at that, the balance of the language, there are still ambiguities that would, I think, lead a contractor to the conclusion or even one of our own employees to the conclusion that they could not release an acquisition plan.

Senator LEVIN. My time is up. I will come back to that.

Senator Bingaman?

Senator BINGAMAN. Mr. Chairman, I had a good friend who was a great student of the human condition, and he used to come up to me occasionally and say, "Now, this is a secret, so if you tell anybody, be sure and tell them it is a secret." And I think that may be what you are dealing with here.

I will save my questions for the next panel.

Thank you.

Senator LEVIN. Thank you.

Senator Pryor?

Senator PRYOR. I have used a lot of my time, Mr. Chairman. I think that this last line of questioning has been extremely informative to me and educational for all of us.

I would like to ask one question of Mr. Stone, if I might. In referring to the rules and regulations that allow this information to go out, you also mentioned consultants. Is that correct?

Mr. STONE. Yes, sir.

Senator PRYOR. Consultants can get this information, inside information?

Mr. STONE. Yes, sir.

Senator PRYOR. How do you qualify as a consultant?

Mr. STONE. I don't think I can give you a precise answer on that, Senator. I think we are all grappling with the definition of the word "consultant." There has been legislation that has been drafted that tries to define it, and certainly, we within the Department have tried to establish our own definitions for consultants and consulting services——

Senator PRYOR. Does the Army have a list that it could give to this Committee or to me listing the "Official Use Only" or classified documents, given to the consultants, say, in the last 3 years? Do you have such a list?

Mr. STONE. I do not think we could provide that list, Senator.

Senator PRYOR. Who could?

Mr. STONE. I think my response really has to dovetail in with what Secretary Welch was responding to you a few minutes ago—in fact, I think you yourself said it—that it is very difficult——you were using Boeing as an example—to know the range of consultants that Boeing might be utilizing themselves on certain contracts; and therefore the way that information, which we would pass on to Boeing in a legitimate manner in accordance with this regulation could in turn be disseminated far more broadly without our knowledge.

We have no recourse in that situation other than to rely on the integrity of the contractor and his clearances, which govern his use of FOUO material——

Senator PRYOR. Mr. Stone, with all due respect, I think what we have here, and I will bet it is true in the other services, are rules, ambiguous as they may be, and I see no way to enforce the them.

Do you agree with me?

Mr. STONE. Well, it gets back again—I keep on coming back to it—Senator Cohen challenging me on my use of the word "leakproof." It is very difficult in this area to establish the leakproof——

Senator PRYOR. May I ask Mr. Welch and Mr. Garrett, do you give classified or "For Official Use Only" information to consultants?

Mr. GARRETT. I don't personally, but I will speak for the system. I would think that there are consultants, as Secretary Welch pointed out, who are appropriately cleared, have the appropriate clearances, and if they have the need to know, then they would be cleared for receipt of such information.

Senator PRYOR. Does the Navy have a list of those consultants that have obtained this information in the last 3 years?

Mr. GARRETT. I can only say that I know of no such list, and I don't know how we would compile one, Senator.

Senator PRYOR. What about the Air Force, Mr. Welch?

Mr. WELCH. Consultants who are directly employed by the Air Force, we can supply you with such a list of those who have current security clearances.

Senator PRYOR. Now, a question, Mr. Welch. Those consultants that are directly employed by the Air Force, here is where I am going, those are the same consultants employed by the contractors; is this correct?

Mr. WELCH. If we are talking about the consultant universe, I would say certainly; they are bound to be. But in the sense of how they are employed, and if they are a direct consultant with the Air Force, there is a certain consulting arrangement, terms and conditions of that consulting arrangement, and people abide by that; and such a list is available. If they are employed by a contractor, they are working through the pass-through rules of the same handling of classified material, but the Air Force would not be maintaining a list down to that level.

Mr. GARRETT. Senator Pryor.

Senator PRYOR. Yes, sir.

Mr. GARRETT. May I address that issue? At least as to the Navy, I have a little, anecdotal comment, and I will refer to that. But when we employ an expert consultant or an adviser by the Navy, they are required to reveal by whom they are employed and other potential financial holdings that may present a conflict of interest.

The anecdotal event that I was going to relate was a former retired Naval officer who came to me; he had been brought on as a consultant to the Joint Chiefs of Staff shortly after his retirement, and he was lamenting that it had taken him half a day to complete all of the paperwork associated with the revelations of what he was doing, for whom he was working, what he owned, so that a judgment could be drawn as to whether or not what the Joint Chiefs of Staff wished for him to do for the Government would present a conflict of interest.

Now, that is true as to the consultants and advisors that we may hire within the Department. I cannot say that that is true of a consultant who may be employed in the private sector.

Senator PRYOR. Mr. Chairman, I think my time has expired.

Senator LEVIN. Thank you, Senator Pryor.

I had a number of questions I wanted to ask this panel relative to POMs, where we have a rule which seems to be fairly agreed upon between the services that these departmental inputs into the DOD budgets are not supposed to be released—that is the rule—and yet the practice out there is that, in fact, they are released with great frequency, that they are routinely available to industry. According to one contractor representative—"you aren't worth a damn if you don't have the POM."

This is an example of where there is just a great difference between the practice on the street relative to budgetary documents and what the rules are. So that is a different kind of a problem. But here, we've got the industry obtaining this information—they say openly, by the way—in many cases from procurement people. And I am not talking here about illegal stuff; I am talking about open stuff. They are widely distributed, available at many locations, according to industry representatives. To put it in a nutshell, the information contained in these documents is dependent largely upon the judgment of individual DOD representatives.

So that here, different DOD representatives will reach different judgments as to whether or not this information should be available. That makes it very subjective. And then you have got a clear difference between that subjective decision by the DOD representatives and the departmental rules, which is that this information is not supposed to be available.

Because of our time problem, I am going to leave it at that, unless you want to add a brief comment.

Mr. GARRETT. I would like to, if I may, Mr. Chairman, add——

Senator LEVIN. Would you agree that there is a difference as to what goes on in practice and——

Mr. GARRETT. In the real world?

Senator LEVIN. Yes.

Mr. GARRETT. Yes, sir. I think certainly there is a difference as to most things that go on in the real world. And the Navy's position

as to the POM document if it were floating around in the private sector would be that this would constitute a violation, because it is a classified document, and it should not be released. And I would have to take issue with anyone in the Department of the Navy who did.

Senator LEVIN. And you are talking about current-year budgetary data in general.

Mr. GARRETT. I am talking about the POM.

Senator LEVIN. Or pieces of the POM or components of it or the items that went into it.

Mr. GARRETT. Well, that is very difficult, because some of the issue papers that are circulated in relation to an issue that is being debated within the POM—it may not be marked at all; it is very preliminary. That is why I would say that it is important to protect it for the internal debates that go on within the Department.

Mr. STONE. Mr. Chairman, if I could inject a slight note of optimism, I think there is hope that this situation would improve, because I think the point that you are making has been correct; there is an inconsistency of perception within the industry and the services in this matter.

In the authorization bill language last year, there was included a new provision that the services must release the FYDP, the 5-year projection. The FYDP is not the same as a POM—and I am not implying it is—but there are substantial similarities between the two documents, and the FYDP will now become a public document annually as a result of that new authorization language.

[Information submitted follows:]

Section 1203 of P.L. 100-180 (FY88 Defense Authorization Act) added a paragraph to U.S. Code 114 that provides that the Secretary of Defense submit to the Congress (not the public) the five-year defense program (FYDP) including associated annexes) by 1 April of each year.

Mr. STONE. I think that this may lessen the pressure on release of elements of the POM and may in fact cause us to relook our regulations relating to POMs.

Senator LEVIN. Thank you all very much. You have been very, very helpful. We have taken a lot of your time and the Subcommittee's time and other panels' time. We are grateful to you and to them for their patience. We will have some additional questions for you for the record.

Thank you all very much.

Our next witness will be Bob Costello, who is the Under Secretary of Defense for Acquisition—our acquisition "czar" and our friend. He has been very helpful to not only this Committee, but other Committees of the Congress, as we try and improve this procurement system.

You have been here all morning long; we appreciate that, Dr. Costello. Why don't you proceed to give us a summary of your testimony, or your reaction, or however you want to proceed.

TESTIMONY OF ROBERT B. COSTELLO, UNDER SECRETARY OF DEFENSE FOR ACQUISITION

Dr. COSTELLO. I would like to have my formal testimony submitted for the record,[1] but there are some comments I would like to make, as well, to reflect on some of the discussions.

It is obvious that we have more than our share of regulations. For example, when I was with General Motors, I was interviewing a senior individual, 3-star rank, who was looking for employment after retiring from the service. We were talking about regulations, and I said that I had reduced the stack of regulations from 154 pages to 13. He looked me right in the eye, and he said, "You can't run an organization with 13 pages; I had 3,700 pages."

I said, "General, you cannot run an organization with 3,700 pages of regulations." So, someplace in between is what we are looking for.

I appreciate the effort of the Committee to help me do my job, which is to eliminate regulations and do some streamlining. So, we share your concern, and we will take the silver lining inside the cloud of too many regulations, and the efforts that you are putting in place to help us reduce those.

Today, our regulations make it very clear what can be and should be released and what should not be released. Actually, we are encouraging the release of information because I think it enhances our ability to get competitive prices on the things that we buy.

Inherent in this structure is an emphasis on the discretionary authority of the program manager to look at other information and decide what is to be released and what is not to be released, where there is a gray area. It is also important that we pay due regard to classifications. The classification issue is key, because the documentation responsibility goes from company to company and from individual to individual. In all cases, if we release information to any one potential supplier, we have to release it to all suppliers so we have an even playing field.

Planning data was one of the issues. These are internal documents for our use only. They are not to be released.

Am I satisfied with the current status? The answer is no—I am never satisfied with the current status of everything. Present regulations and directives have aggregated over the years; and yes, we are now in the process of consolidating them so we can give the people in the field a better tool with which to work.

We have been working with OFPP, the General Services Administration, and the National Aeronautics and Space Administration to prepare uniform, Government-wide guidance for incorporation into the federal acquisition regulations, that addresses this directly. Are we working on it? The answer is yes we are, so that we can have a uniform policy. You have to look at the various organizations for the specific directions and in many cases, instructions, for implementing that policy.

Where are we? We have regulations in hand that encourage the disclosure of information to potential legitimate suppliers when it

---

[1] See p. 99.

is in the best interest of DOD. We have a set of strict rules—voluminous, yes—so that we can look at those areas in which information is not to be given out, including careful consideration of the classification of the data. The program manager and the contracting officer have access to those rules. We are going to publish a document which will be a better tool for them so they can access more readily the specific rules in the case that they are reviewing. They have to be given flexibility to do their job on a case-by-case basis, because some information on one program may be reasonably available and accessible to everybody—say, fuel economy for a new truck—but perhaps the radar cross-section of a new airplane obviously would not be.

Overlying all of that, though, is the need to handle the distribution of that information in an even-handed manner to all of the legitimate contractors.

I will read the last paragraph of my statement:

> It is my opinion that we can improve our policies for the disclosure of acquisition information so that they are more clearly stated and more easily found. However, I caution against an approach that advocates absolute consistency in the disclosure of information. We need to provide the best policy guidance, uniform policy guidance from my office. But we must leave much to the discretion of program managers and other acquisition officials, who must be relied upon to use their good judgment in determining the propriety of releasing information where release is not required by law.

In many cases, we do have information release required by law.

So I would be glad to answer your questions.

Senator LEVIN. You have heard the testimony this morning, and I think you have seen evidence of both conflicts inside a service and between the services as to what the disclosure rules are; conflicts between the rules and practices, we will hear more about later, but I think you are aware of that.

Are you troubled by it?

Dr. COSTELLO. I am troubled. In many cases, we have overlapping efforts. It is duplication that we need to avoid. Referring to Secretary Garrett's statement, he states that my office is doing a lot. In fact, those three gentlemen and I meet at least once a week to discuss these kinds of issues, so that we can reduce the duplication, overlap or the inconsistencies.

We have a group that was established last summer with the disclosure of the "Ill Wind" investigation reviewing the regulations for any overlap or inconsistencies. We are going to continue that through the Services so we can have one policy without inconsistencies.

Senator LEVIN. Are you going to have one policy for the disclosure of documents for all the services?

Dr. COSTELLO. We are going to have one policy. They may implement them differently because of the different organizational structure, different levels of clearance, or approval levels that they have established.

Senator LEVIN. Will the same documents be disclosable by one service and not by others?

Dr. COSTELLO. I would go back to specifics. I may have some performance characteristics on an Army vehicle that the Army decides to release. The Air Force may have some performance charac-

teristics on a very highly-classified program that they will not release to anybody. So you have to allow that kind of discretion between the programs.

Senator LEVIN. That is because of the classification?

Dr. COSTELLO. That would be because of classification.

Senator LEVIN. But say the contractor has clearance for that classification.

Dr. COSTELLO. I would look at Jack and say that we will get a better proposal, more effective use of the contractor's energies, if the contractor has that information. But you cannot do that as a blanket case.

Senator LEVIN. I am just saying I don't know what saying that documents will be classified does in terms of helping us on this problem. We have got conflicts inside services, between services, on the same documents. You say we'll put a classification on it—that does not solve your problem. Some contractors have clearance to see those classified documents.

Dr. COSTELLO. If a person does not have clearance, he cannot get that document.

Senator LEVIN. And if he does have clearance?

Dr. COSTELLO. If he has a "need-to-know," he may end up getting that document. Those rules are well-established on handling classified data.

Senator LEVIN. I know, but I am just saying that the classification does not help us solve this problem because most contractors have clearance.

Dr. COSTELLO. I think the problem is if a person has a right to have the data, and the contracting officer thinks that he should have it, then all people in that group should have it.

Senator LEVIN. That is a different issue; I would agree with you. That does not happen now, by the way, either, that once it is released to somebody, it is released to everybody. But I think that is a good policy.

Dr. COSTELLO. But that is a change that we have to make sure happens.

Senator LEVIN. That is fine. I think that is important. It is not working well now, and it should, I agree with you. But that is not the issue I am talking about. The issue I am talking about now is whether a document should be disclosed to anybody. And the answer that we get in part is, well, that will be decided by our "For Official Use Only" stamp. What we proved before, I think, is that does not decide anything, because the Department of Defense rule on "For Official Use Only" is that "For Official Use Only" material may be disclosed to contractors. So putting a stamp "For Official Use Only" on it does not solve that problem.

Dr. COSTELLO. It does not solve the problem.

Senator LEVIN. What I am telling you is that putting your classification stamp on it does not solve the problem, either, because a lot of our contractors—I would think most of them—have clearance.

Dr. COSTELLO. The stamp does not solve the problem. You have to go to the content of the information.

Senator LEVIN. Exactly right. You have got to come up with a decision as to whether or not that document can be disclosed to contractors or not.

Dr. COSTELLO. That is right.

Senator LEVIN. We don't have that.

Dr. COSTELLO. I am hedging, obviously. You can say that, yes——

Senator LEVIN. I have given some examples of where we just simply do not have it. I can rattle off 10 of them where we've got "For Official Use Only" on there; that is the only guidance that we give to our people.

Dr. COSTELLO. I listened to that, and I smiled, because——

Senator LEVIN. Did you weep or did you smile?

Dr. COSTELLO. You have to have a sense of humor around here. If you weep you are going to weep all the time. So I try to of have a smile most of the time.

Senator LEVIN. But did it bother you?

Dr. COSTELLO. Sure, it does.

Senator LEVIN. Okay.

Dr. COSTELLO. It is the content of the information, not the stamp on the envelope, that is important.

Senator LEVIN. And let the services—it is that content which should determine whether the document——

Dr. COSTELLO. It is the policy.

Senator LEVIN. No——

Dr. COSTELLO. No. That is the policy issue.

Senator LEVIN. But we don't have the stamp or the guidance which says "Document Type 1, disclosable; Document Type 2, disclosable; Document Type 3, not disclosable"; we do not have that. Document type after document type after document type is either disclosable or not disclosable, according to individual procurement officers by their judgment as to whether or not that "For Official Use Only" stamp allows it to be disclosed, and that doesn't tell you a damn thing.

Dr. COSTELLO. You and I share the same frustration.

Senator LEVIN. OK. Now, give us a timetable, if you would—and by the way, the same thing is true with the classification stamp; it doesn't tell you whether it is disclosable, either. So those two guidances which are pointed to as the standard for whether something is disclosable doesn't give you guidance on disclosability, because under both of those stamps, both of those standards, contractors can have access to those documents. Together so far—are we?

Dr. COSTELLO. Yes, sir.

Senator LEVIN. Okay, next question—my time is up, but I will look to my one colleague here and ask that I be allowed to finish this one question.

Senator PRYOR. Yes. This is educational for all of us. Go ahead, please.

Senator LEVIN. Can you give us a timetable as to when the Department—and I am not trying to get into your own personal timetable, because I know there is a change of Administration, obviously. And by the way, you have done one hell of a terrific job. I want you to know that, and I have said that publicly in many other places. I think you have done a very, very fine job in coming into this Department. It is a complex situation you have taken over.

You have got a very good style of management that I happen to share, which is consensus-building—I think that is important—for every consensus you can create, you are going to do more, probably, than 10 rules. I think your approach to it is right, and I will leave it at that. So I am not asking you about your personal timetable. But what would you hope the Department of Defense could do in the next 6 months or a year, relative to getting disclosure rules for document types so that we can do it that way?

Would you hope that within 6 months, we could know?

Dr. COSTELLO. I will read from my testimony. I expect as a minimum that this group will publish a clear and comprehensive statement of DOD's disclosure policies in a single document which will be widely distributed to both contractors and DOD personnel by the end of the year.

Now, we have to go through OFPP, and we have that action going on right now.

Senator LEVIN. Would you be willing to modify that testimony, to say that your disclosure policy as it applies to document types?

Dr. COSTELLO. Certainly.

Senator LEVIN. Okay. That is critical.

Senator Pryor?

Senator PRYOR. Thank you, Senator Levin. I will not use all my time.

I would like to thank you, Dr. Costello. I think you have taken on a very tough and maybe impossible job, and the way you handle it, I think, has been correct. I think as a result of this hearing this morning by Senator Levin and others that some of these problems, hopefully, will be corrected.

Question. Does it concern you, as you have watched this system work, that the Department of Defense, or the Air Force, Navy, or Army, hires a consulting firm, say, Consulting Firm A; and that consulting firm also works for a defense contractor that ultimately winds up with a defense contract. That same consulting firm also works for a foreign government or for a potential, let's say, adversary, or someone who might pose a conflict of interest. And does it concern you that that consulting firm, according to the 3 services is eligible to receive inside information? I mean, the government makes no distinction; there is no differentiation between the consulting firm and the contractor.

Does all that worry you?

Dr. COSTELLO. If we are talking about classified information, the rules for handling classified information are extremely explicit. It goes from my office to the person I give it to at the company, and everybody has to sign for these documents. They have the responsibility. That trail goes down to the last person who ends up with the piece of paper. He has a legal, well-documented responsibility for handling that information, the care and safeguard of that information.

Is that your concern?

Senator PRYOR. My concern is that we do not know who these consulting firms are working for; we do not know how many sides of the street they are working. And I cannot, for the life of me, see why the Department of Defense opposes the simplest, the simplest, of registration by these consulting firms as to who their clients are,

so we could press a button in a computer and say, "Wait a minute, we would like to hire this firm, but they also work for 13 other companies, defense contractors, or nine other governments, or interests that might be in conflict with the policy of the United States Government." I cannot understand this. I have never been able to understand it.

Dr. COSTELLO. We do just that today. We ask the consultant, "Who do you work for?" I think Secretary Garrett said one of the individuals we wanted to bring on as a consultant had to list all of those. It is extremely important that we do have that data so that we do not put him in a position of transferring his knowledge from "A" to "B" to his advantage or to that other company's advantage. We have to be careful of that, and we are careful of that. If he is working for us on Project A, we want to make sure that he is not working for company "C" on Project A, also. And we ask him, "Who are you working for?" before we put him on that particular project and use his capability. It is important that we do.

Senator PRYOR. The consulting industry has said that they don't need new laws or regulations, but self-policing. They are merely certifying, as I understand, to you that there are no conflicts. I don't know that they list everyone that they are working for. I don't think law firms list everyone that they are working for.

Dr. COSTELLO. That insures the integrity of the individual we are hiring; they are supposed to list everyone.

Senator PRYOR. Well, I know this: they have opposed any attempt for registration.

Dr. COSTELLO. I understand they have.

Senator PRYOR. I cannot fathom why we do not insist upon it. But we will take that up another day.

Thank you, Mr. Chairman.

Senator LEVIN. Senator Pryor, thank you.

Dr. Costello, we are grateful to you not only for your testimony, but for your patience and just for your presence here at such length this morning; your willingness just to be here to listen is very reassuring indeed.

Dr. COSTELLO. The issue of regulatory simplification—not doing away with regulations totally, but simplification—is a major issue that we have underway, and we appreciate your interest in the same subject, Senator.

Senator LEVIN. Thank you, thank you so much.

Our next witness is Robert Murphy, who is the Associate General Counsel of the General Accounting Office. Mr. Murphy, if you haven't given up on us—we probably told you we would reach you about 10:45, right?

Your testimony is relatively short.

TESTIMONY OF ROBERT P. MURPHY, ASSOCIATE GENERAL COUNSEL, U.S. GENERAL ACCOUNTING OFFICE [1]

Mr. MURPHY. It is, Mr. Chairman, and I will seek to be brief.

Senator LEVIN. Thank you.

---

[1] See p. 108 for Mr. Murphy's prepared statement.

Mr. MURPHY. I am accompanied today by two officials from our Office of Special Investigations—Assistant Director for Investigations, Pat Noble, and Special Agent, Don Fulwider, who participated in the investigation that I am going to discuss today.

We are pleased to be here to discuss a matter included in our 1987 investigation of apparent favoritism toward a potential contractor at the U.S. Army Strategic Defense Command.

On July 13 1988, we provided testimony concerning our investigation before the House Subcommittee on Legislation and National Security.

The investigation was coordinated with the U.S. Army Criminal Investigation Command, known as the Army CID, and established apparent preferential treatment in the conduct of a procurement by Lieutenant General John Wall, then Commander of the Strategic Defense Command.

Specifically, we discovered that General Wall took actions creating the appearance of preferential treatment for an engineering consulting firm, BDM International, Inc.

In July 1986, General Wall directed that BDM be made the interim contractor for a major new research initiative, pending the award of a permanent contract. The Strategic Defense Command was aware that BDM intended to compete for this new contract. We learned that on December 19, 1986, at General Wall's direction, a meeting was held to plan the acquisition strategy for that permanent contract.

At General Wall's invitation, a senior executive of BDM was present at that meeting and was the only contractor there. This gave BDM information not then available to other potential offerors, giving the appearance of an advantage over others. Individuals at the meeting have stated that they felt the presence of a BDM executive was inappropriate and gave a negative appearance to the meeting.

Our review of this procurement determined that in April 1987, 74 requests for bids were distributed to various potential bidders, but only one proposal, that of BDM, was submitted. BDM was awarded the 7-year, $108 million contract on September 14, 1987.

As I stated earlier, we jointly investigated the General Wall matter with the Army CID. At the conclusion of the Army CID investigation, there was a difference of opinion within the Army as to whether the information provided at the December 19, 1986 meeting violated the Army's Regulation 600-50, which is "Standards of Conduct for Department of Army Personnel." Two provisions of these standards are relevant.

Paragraph 1-4(f) prohibits action that "might result in or reasonably be expected to create the appearance of", among other things, "giving preferential treatment to any person or entity."

Another paragraph, 2-1(g), prohibits the release to a business concern of "any knowledge" Army personnel may have "concerning proposed acquisitions or purchases." This paragraph states that such information must be released to all potential contractors as nearly simultaneously as possible and through designated agencies to avoid giving one firm an advantage.

The Army CID investigating agent reports that attorneys from the Office of the Army Judge Advocate General and attorneys for

Army CID concluded that acquisition information had indeed been provided to one potential contractor in violation of Army Regulation 600-50. According to the same source, a procurement attorney for the Army Material Command concluded that unless it was established that the information provided actually gave BDM an advantage, there would be no violation of Army Regulation 600-50.

As a result of this view, the investigating agent was instructed to re-interview witnesses to determine whether BDM received an advantage from the information it received on December 19, 1986. The results of these subsequent interviews were inconclusive. Army CID then concluded that irrespective of the view of the Army Material Command attorney, actual advantage to a potential contractor is not required for a violation of Army Regulation 600-50.

Army CID then recommended that action be taken against General Wall. In May 1988, the Army Vice Chief of Staff issued a written reprimand to General Wall. The following month, General Wall retired from active duty.

In December 1988, partly as a result of the General Wall investigation, the Chief Counsel for the Strategic Defense Command issued detailed guidance regarding the release of information about acquisition plans. This guidance was a result of his belief that potential systemic problems could be avoided by reemphasizing the governing standards of conduct. A copy of this guidance is attached to my written statement.

Mr. Chairman, that concludes my brief statement. We will be pleased to respond to any questions at this time.

Senator LEVIN. Mr. Murphy, thank you.

You have testified that attorneys for the Army's Criminal Investigations Command concluded that at the briefing in question, "acquisition information had been provided to one potential contractor" in violation of Army regulations.

The Subcommittee staff was told that the information included the acquisition strategy, the source selection authority, information on the type of contract that the Combined Allied Defense Effort, CADE, was going to be; the procurement strategy for 4 years; and the CADE schedule containing important progress dates. Is that right?

Mr. MURPHY. Certainly. That was information provided to BDM.

Senator LEVIN. As you say, that was the type of information that was disclosed to BDM, but not to other possible bidders; is that correct?

Mr. MURPHY. Our investigation disclosed that it had not been previously provided to other bidders, although——

Senator LEVIN. How about subsequently?

Mr. MURPHY. Subsequently, the RFP was released in February, and at that time the information would have been provided, except for the identification of the source selection authority which, by Army policy, is not released.

Senator LEVIN. All right. So that prior to the RFP, BDM was the only one that had that information?

Mr. MURPHY. That is apparently true, although——

Senator LEVIN. As far as you can tell.

Mr. MURPHY. As far we know. There was a wide difference of opinion among Army personnel as to what had been released prior and what had not been released.

Senator LEVIN. But some Army personnel believed that that material had been released to BDM prior to the RFP?

Mr. MURPHY. Well, we knew that it had been released to BDM, yes, sir.

Senator LEVIN. All right. Some Army personnel apparently, then, denied it?

Mr. MURPHY. All of the Army personnel knew that it had been given to BDM. Their difference of opinion was whether it had been given to other potential contractors or not. Some believed that it had been provided in Army briefings earlier. So that the individuals at the meeting really did not know what information was to be made public or not.

Senator LEVIN. All right. Did you talk to the other contractors to see whether or not they had been provided that same information?

Mr. MURPHY. We did not talk to the other contractors, although we reviewed materials that had been provided by the Army to contractors at briefings.

Senator LEVIN. All right. Now, when we read the CID's reports, the picture is not clear in a number of respects. Some of those interviewed said that what was given to BDM did not create an unfair competitive advantage; others said it did create an unfair competitive advantage. Some said that much of the information had already been released; others said it was the type of information that should not be released at that point in the procurement process.

Does that comport with your findings?

Mr. MURPHY. Yes, Mr. Chairman.

Senator LEVIN. Now, we have been told that the Army has provided clear guidance on the do's and dont's of providing this type of information. In your opinion, Mr. Murphy, do the Army regulations, such as those you have cited in your testimony, provide good guidance?

Mr. MURPHY. The regulations that were cited that General Wall had allegedly violated do not define the type of information that should or should not be released to contractors before an RFP actually hits the streets. So in that sense, they do not provide guidance at all.

Senator LEVIN. Now, one of your regulatory references is simply to the Army's embodiment of the Executive Order against creating the appearance of favoritism. The other is a fairly sweeping regulation under the conflicts of interest regulation that would seem to be at odds with some of the other regulations that we have been looking at today.

You have said that this past December the Chief Counsel for the Strategic Defense Command issued a new directive about the release of acquisition information, partially as a result of this investigation.

In your judgment, as an attorney with procurement expertise, does this directive constitute clear guidance to the command personnel on procurement procedures?

Mr. MURPHY. Well, I can say it provides some specific descriptions of information that should or should not be released, and it reiterates the requirement that information should be provided to all potential contractors at once. But it does leave a lot of latitude for the judgment of individual procurement personnel concerning what kind of information may or may not be released in advance of the issuance of the solicitation.

Senator LEVIN. Is it fair to say, then, that even this new directive does not constitute adequate guidance, in your opinion, to the command personnel on procurement procedures?

Mr. MURPHY. Oh, certainly, by itself.

Senator LEVIN. Before we turn to our next panel, let me just say here that General Wall disputes portions of the Army's official findings; that the Subcommittee has received a written response from him; that he will be given an opportunity to review the testimony heard today and to respond for the record if he chooses, because we want to be fair to him. Indeed, if I understand your testimony, frankly, I think your testimony is helpful to him, but we will let others interpret your testimony as they want. But in any event, he apparently does dispute a portion, and he obviously does dispute portions of the Army's official findings, and he will be given an opportunity, as I indicated, to file a statement for the record after he has reviewed the testimony heard here today.

Mr. Murphy and your colleagues, unless you have something additional to add, we are grateful for your presence today.

Mr. MURPHY. Thank you, Mr. Chairman.

Senator LEVIN. Finally, we will call a panel representing the Aerospace Industries Association. I believe that there are two people on this panel, first, Robert Trimble, who is the Vice President for Contracts of the Martin Marietta Corporation, and Mr. William A. Anders, who is the Senior Executive Vice President for Operations of Textron, Inc.

Mr. Trimble, Mr. Anders, we welcome you. You have some very lengthy testimony, and it is going to be necessary that you shorten that significantly if we are going to have an opportunity for some questions.

We really should finish here no later than half an hour to 40 minutes at the outside.

We are very pleased that you have come forward this morning. We are grateful for your presence, and we are sorry that it took so long to get to you. But I hope you found the testimony worthwhile.

TESTIMONY OF WILLIAM A. ANDERS, SR., EXECUTIVE VICE PRESIDENT, OPERATIONS, TEXTRON, INC.; AND ROBERT F. TRIMBLE, VICE PRESIDENT, CONTRACTS, MARTIN MARIETTA CORP., ON BEHALF OF THE AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA, INC.

Mr. ANDERS. Well, in mercy to you and to us, Mr. Chairman, we would recommend, and had planned to recommend, that we submit this testimony, the joint statement of Mr. Trimble and I, for the record, if that is all right.[1]

[1] See p. 115.

Senator LEVIN. Thank you. It will be made part of the record.

Mr. Anders, please proceed.

Mr. ANDERS. We are here appearing on behalf of the Aerospace Industries Association, Mr. Chairman. This trade association represents the Nation's major manufacturers of military and civil aircraft, spacecraft, helicopters, and their related components and equipment. And we really do appreciate the opportunity to have some commentary on this important issue.

I have a very brief summary statement that I would like to go through, if you would not mind, and then Mr. Trimble has some particulars that he would like to briefly follow up on.

Senator LEVIN. That will be fine.

Mr. ANDERS. Mr. Chairman, I have been involved over 30 years as either a Government operator, engineer, program manager, policy setter, as well as a businessman, in defense and technology-related research, development and acquisition.

In listening to the preceding testimony this morning, I must say I agree with the general thrust of what the prior witnesses had to say, especially as it concerns maintaining the integrity of the acquisition process.

I do have some differences on the matter of degree for the need for planning information release and on their views on the need for clarity and uniformity.

Mr. Chairman, as you and your colleagues know, one of the basic elements of U.S. defense strategy is to meet our adversaries' quantity of weapons with quality weapons. That quality often requires the companies making up America's defense industrial base to make long-term commitments to research, development and modernization of their facilities. This in turn requires long-term resource allocation planning by the defense industry. In this manner, the DOD's mission can be accomplished with highly-effective weapons systems more efficiently and economically, and with wiser use of our tax dollars.

To achieve effective long-term resource allocation by industry, the timely flow of essential strategic and acquisition planning information between the Department of Defense and their suppliers of advanced weapons systems is critical. DOD and the defense industry must share the maximum amount of information possible for the benefit of our national defense efforts.

In the long run, the Department of Defense, in fulfilling its mission against the hostile threats and actions of our Nation's adversaries, can only be as good as its industrial supplier base. This was basically the conclusion of a recent Defense Science Board study that I co-chaired last summer.

For the issues you address in this hearing, I strongly believe that we should begin with the heavy presumption that information should be available to defense suppliers unless otherwise specifically restricted or prohibited. Industry needs planning information to fulfill its role.

We find from experience that the current rules governing disclosure are unclear, conflicting, and often poorly implemented. A reduction in the information withheld should help in this regard. If information is national security sensitive, it can be handled through our classification laws and regulations. In my view, the

only information that should not be released is information that is clearly company-proprietary or Government source selective-sensitive.

We believe that a new effort between Government and industry to improve the information flow and clarify the standards for information release is essential to obtaining the needed quality in our defense weapons systems. This will become even more critical in the coming months, as Government and industry address the compliance and procurement integrity provisions of the Office of Federal Procurement Policy Reorganization Acts, which essentially means that we will have to certify that our people have not relied upon inside information in an environment of confusion and contradictory rules and regulations associated with the large gray area of information, as has already been brought out by this hearing.

This hearing today, in my view, is an important step in addressing that issue, and we appreciate the opportunity to appear before you.

Thank you.

Senator LEVIN. Mr. Anders, we thank you, both you and Mr. Trimble, for testimony which will be made part of the record and which contains a tremendous amount of detail as to how this system functions. That detail is very, very valuable to us and to the Congress, and just the documentation of it, in and of itself, in that testimony is very useful indeed.

Mr. ANDERS. Thank you.

Senator LEVIN. Mr. Trimble?

Mr. TRIMBLE. Mr. Chairman, I come to you as a person who has worked in this business for over 37 years—30 years was in the Government at all levels of policy and operational management of the acquisition process; and 7 years now with a DOD prime contractor.

It may be an oversimplification, Mr. Chairman, for me to say that the basic issue that we are discussing is that of communications in its simplest form. It is our judgment that there is inadequate communication between contractors and Government with respect to this very serious and very expensive matter of acquiring weapons systems for our country.

I would like to also make the point clear that we are dealing with a multifaceted problem, and one reason why we have so many regulations to follow, and another reason why it is difficult for us and for you to grapple with the issues that are involved, is because what pertains to a very complicated new, highly sophisticated weapons system does not pertain to a commercial item or to a replenishment spare part or to an item of service. This needs to be taken into consideration, when we map out new rules as to what data can and should be made available.

It also should be made clear, Mr. Chairman, that there are new conditions that are prevalent today that did not exist when I commenced this work in 1951. Indeed, the conditions of 1989 are considerably different than they were just 4 years ago, and we must take into consideration what these are. I will enumerate a few.

First of all, the military mission requirements are extremely and increasingly more difficult for us as a Nation to meet.

Secondly, weapons are infinitely more complex and hard to design, requiring a great deal more insight and communication be-

tween us and industry and the Government technicians and laboratories.

Thirdly, the acquisition process, policies and procedures are incredibly complex, and they have been made much more complex in the last decade, many of which have been characterized as reform efforts, but as a matter of fact, they have complicated the process.

Next—and this is very important, sir—contractors are expected to make financial investments in the development and production of new weapons systems.

Next, competition for procurement contracts has grown greatly since the Competition in Contracting Act.

Next, allegations of wrongdoing are indeed rife, and they have placed pressures on the system that we never experienced before.

And last, and a direct result of the previous point, adversarialism and a lack of trust has grown to a point where it is pretty much unacceptable.

We are indeed in a new market or, if you would, we are in a new ball game, and this is ever more reason why these policies with respect to the disclosure of information should be made abundantly clear.

But it is our bottomline thesis that the current flow of information is not adequate to meet our operating needs as an industry that is dedicated to fulfilling the operational requirements and the military requirements of our Nation.

I would like to provide for you three simple examples of the types of problems we are experiencing. First, that of resource allocation. It is imperative to us as we develop our long-range plans to have an understanding of what our market is likely to be 5 and 6 years out. It is on the basis of that prediction that we must allocate resources not only of material, but of plant and equipment, with the finances, in order to prepare ourselves for the potential sales in the outyears. We do not get adequate information to do that job properly.

It is also significant that the ratio of our investments today, based upon our prediction of sales, is increasing considerably over what it was 10 years ago.

Next, design criteria. It is not uncommon for us to proceed with a new design requirement, or for a requirement for fullscale engineering development, without adequate information regarding what it is that the Government expects out of the system that we are designing or, if you would, an estimated cost. The result is that we frequently over-design, with the result that we are spending undue amounts of time and effort in redesign efforts.

And last, the matter of cost-sharing. The Government is now requiring considerable sums of money to be invested by contractors on specific programs with no assurance that these investments will be amortized, or that the rates of our investments are in consonance with the level of spending that is contemplated for these particular programs.

It is argued that expectations of Government expenditures are changing, and therefore, because of the uncertainty, this information should not be supplied to us. We do not agree with this. We believe that we need planning information as it goes through the various Government decision gates. Allow us to get this informa-

tion and put the Kentucky windage on it, if you would, so that we think we can make a better and more informed judgment on these critical investments which mean so much to us.

I would close with three dominant points. The first point to be made, sir, is that a better flow of data and information is in the Government's best interest. In a monopsony, which we are in, the Government is the only buyer, and it either absorbs costs of inefficiency or it sees its vendor base disappear. There can be no question but that more information will reduce costs and help retain competitors for Government business. In the final analysis, the Government is the winner as it makes more information available to industry so that competition can be increased and so that we can do our job more efficiently.

The second major point—under the certification requirements of Section 6 of the Office of Federal Procurement Policy Reauthorization Act, we absolutely must know the rules. We cannot certify to something that is not clear. To quote President James Madison, who wrote in "The Federalist Papers" many years ago, "How can that be a rule which is little known and less fixed?"

We are going to have to start certifying on May the 17th of this year, and our people cannot certify if they are not sure what they are certifying to, and most especially they are concerned because there is a potentiality of criminal violation for false certification.

The third and last point that I would make to you is that the new rules of the game must be greatly simplified, and that all information should be made available unless it is source selection sensitive—it should be simplified and, as Bill Anders has already pointed out, we think all information should be made available unless it is source selection sensitive or it is proprietary in nature, and that these new rules must not be made retroactive for certification purposes.

In other words, when we certify starting in late May of this year, Senator, we should not be certifying to rules that did not apply prior to May 17.

My concluding recommendation to you is this—and I have heard your exhortations to the representatives of the Department of Defense to get on with changing the rules—we concur in that—but I also believe that we need to have some form of open forum that will permit us in industry to, at the same time, advise our friends in the Department of Defense as to what we believe these rules are and to explain to them why we think this information can and should be made available.

We do not want them to, in the sanctity of the Department of Defense, change these rules without our having some opportunity to have some input on that.

We think that the best interests of the Government will be served if we have that open forum.

Thank you very much, sir.

Senator LEVIN. Mr. Trimble, thank you.

A number of the issues which you have raised are important issues, although they might not be directly in front of the Subcommittee this morning, including that last issue that you raised relative to the certification that is going to be required of you.

You will, of course, have an opportunity for comment on rules after proposed rules are published.

Are there not meetings where the industry and the Department of Defense can get together, where industry can explain its positions on which document should be disclosed? Is there not that process? I hate to go off on a tangent from my own particular set of questions that I want to get to, but just briefly, do you feel you do not have an opportunity to make your opinion clear to the Department of Defense on which documents should be disclosable by the DOD and which should not?

Mr. TRIMBLE. My answer is that it is varied. I would say that our statement—which was put together by a large group of people from industry—is excellent. There are some specific recommendations in here as to which documents should be made available, and that is a minimum.

I do believe, however, most especially after listening to the three representatives of the military departments this morning who were explaining why they believe that documents should not be made available, I would like to be able to sit with some of my compatriots in industry to explain what are you going to achieve, and here are the reasons.

This is the communication that I referred to.

Senator LEVIN. That is an important question, it seems to me, but it is one that we are going to have to leave to a different forum, or maybe we can assist in some way in that area. But the issue here this morning is not which documents should be disclosable; the issue here is not whether the more that are disclosed, the better, as your perspective generally is—and that is an understandable perspective. The issue here is whatever the Department of Defense decides to disclose, for heaven's sake, make it clear, make it consistent, so that we do not have the uncertainty and the confusion that exists in this area today. That is what we are focusing on.

Yes, Mr. Anders?

Mr. ANDERS. A comment on that very point, Mr. Chairman. You saw, obviously, some difference of opinion and confusion here in the earlier testimony this morning. Can you imagine how it would be from the point of view of industry; which is not just buying for one service, but has to sell to three services, NASA, the Coast Guard, Department of Transportation and others; the massive job it is to try to figure out your way through this thicket. You want to be totally honest and fair about it, and yet there is so much lack of clarity that it would take years to try to fully understand what it is you are certifying. That puts a real burden on the certifier.

Senator LEVIN. It does, indeed, and I think it is clear that the Department—that the Government—has contributed to the inside information scandal and the confusion that exists out there. I am not talking about "Ill Wind;" I am not commenting on that investigation. I am just talking about the tremendous amount of "inside information" which is available, much of which, by the way, industry would say should be available. But without arguing the should or the shouldn't, the fact that there is confusion and uncertainty and conflict as to what information should be available, as far as the Department of Defense is concerned, it seems to me, has made a real contribution to a problem. It is not just that industry has

contributed to the problem through competitively trying to get as much information as possible, and maybe at times going over the boundary, sometimes illegally, sometimes unethically, most of the time probably not. So I think industry obviously has contributed some.

The point this morning, though, is that the Department of Defense, through unclear rules, through practices which violate rules, through inconsistencies inside the Department as to the application of rules, as to conflict between the departments as to the application of DOD rules, all that has contributed to a real, real problem, and that is what we are focusing on today.

Now, I read a number of quotes from the press in my opening statement, in which people associated with the defense industry stated that inside information on defense contracts is widely available.

Setting aside for the moment again the question of whether or not this is good or bad, proper or improper, it again seems to me that those quotes indicate—and my own knowledge and our staff investigation indicates—that Pentagon procurement and planning information is frequently released to contractors—okay—that Pentagon procurement and planning information—it is just out there; this kind of information is out there.

Do you agree that as a matter of current practice that a wide variety of procurement and planning information is routinely made available to contractors?

Mr. ANDERS. Mr. Chairman, maybe my company is missing the boat, but frankly, I have never seen a POM, and I don't know anybody in our company who has, and if they have, they are in big trouble with me.

Senator LEVIN. Do you think that POMs are made available to other companies?

Mr. ANDERS. I don't know. I would say that there are elements of the DOD planning process, particularly if you are involved in a big, on going contract, that are given to you are part of the planning process of that contract. Maybe they come from the POM. But I for one have not seen a POM. And if I have seen inside information, I personally am not aware of it.

Senator LEVIN. Well, "inside information" is used in a general way. We are trying to find a generic phrase.

You heard the conversation over Mission Need Statements. Okay, there is confusion over whether or not Mission Need Statements are available. There are unclear rules about acquisition plans, because the DOD uses the reference to the classification rules—that does not help very much—to the "For Official Use Only" rules—that does not help very much, because you folks under the DoD rule have access to information which is marked "For Official Use Only."

So my question to you is: Is it true, in your opinion, that there is a lot of confusion and inconsistency and conflict inside some of the military departments and between the departments over the availability of the materials that we have talked about this morning?

Mr. ANDERS. Yes, I believe that is the case.

Senator LEVIN. Do you agree with that, Mr. Trimble?

Mr. TRIMBLE. I don't believe I do, sir.

Senator LEVIN. Okay.

Mr. TRIMBLE. I used to say when I was in the Department of Defense that the large number of rules and regulations were there because of the very large, multifaceted problem, and to the professionals in the process it is clear, in my judgment, on what is releasable and what needs to be released to get on with the job.

On a little bit of philosophic background, I believe that this process works now, Mr. Chairman, because we have people of good faith on both sides of the table who are willing to communicate with each other in the best interest of the Government. And I would conclude by saying that my 37 years of experience shows me that 99-44/100 percent of the people are honest, and they are attempting to do a job.

Senator LEVIN. Well, let me just say—and my time is up—that that is not in dispute. But when honest people believe that documents are available, and other honest people believe that those documents are not available—when you have that much confusion out there—and we do, by this morning's testimony, we do—you've got a problem.

We are talking here about honest people. We are not talking about dishonest people. That is going to have to be taken care of in some other setting—that is a Justice Department setting, that is a courtroom setting, a criminal courtroom. We are talking about honest people. When honest people do not know whether or not they are entitled to get Mission Need Statements, whether or not they are entitled to get acquisition plans, whether or not they are entitled to get POMs or pieces of POMs or advance pieces of POMs, or what-have-you—honest people. When you have got defense contractors who say, "You are not worth a damn if you don't have a POM"—that is not a dishonest defense contractor, by the way; that is not a criminal. That is an honest defense contractor who says you are not worth a damn if you don't have a POM. I don't know where that leaves you, Mr. Anders.

Mr. ANDERS. I guess we are not worth a damn. [Laughter.]

Senator LEVIN. But when you've got that much conflict between honest defense contractors, something is wrong. That is my own conclusion.

Senator Pryor?

Senator PRYOR. Thank you, Mr. Chairman.

You are seeking more information, I assume that is the bottom line, and more knowledge about what we are going to do in the outyears. What does the taxpayer get in exchange for that?

Mr. ANDERS. Well, we have to look at what the defense industry is. Is it a moneymaking organization of shareholders? Of course, that is one aspect. But it also can be described—and I use the term, "fortress America"—as the supplier of the R&D that leads to these weapons systems.

Many studies have found that basically the ideas for solving defense issues arise from the industry. So what the taxpayer gets is a wiser investment of the Government and the industry's discretionary research and development money that will someday lead to the solution of some threat problem.

If you don't know what the threat is, if you don't know what the mission is going to be and so forth, then it makes it essentially just a wild guess as to where you should put your R&D money.

Senator PRYOR. If we give you more information, and the DOD gives you information, what additional information would you give to us, the Congress, or to the people, about yourselves?

Mr. ANDERS. Basically, the Government gets anything they want, and they get it by the truckload. The idea that it is a one-way information flow is totally wrong.

Senator PRYOR. All right. Would you, for example, list voluntarily all of the consultants and consulting firms that you have hired to obtain such a contract?

Mr. ANDERS. I frankly don't see any problem with that, but I have not thought it through that much.

Senator PRYOR. Would you, for example, be willing to list your company's expenses in obtaining a particular contract from Department of Defense or one of the branches, Army, Navy, or Air Force?

Mr. ANDERS. I also do not see a problem with that, but I would like to reserve the right to think about it.

Senator PRYOR. Mr. Trimble, do you have any problems with any of this or does your industry?

Mr. TRIMBLE. I am unable to tell you, Senator Pryor, that I know that the industry as a whole would advocate the complete open disclosure with respect to the consultancy. It is something that I am not here qualified to speak for them on it. I do not personally believe that there should be a problem with respect to that, because we honestly believe that what we are doing in gaining consultancy information is proper; it is a part of our normal course of doing business. And we make it very, very clear to these consultants that this is to be done honestly and properly. We are not seeking so-called "inside information" that we should not have.

In most cases, Senator, we are looking for qualitative judgments as to what needs to be done most frequently from all scientific/technical standpoint of where we go, and these individuals frequently perform an extremely valuable function not only for us, but for the Government as a whole. They are experts.

Senator PRYOR. Your company is Martin Marietta, I believe.

Mr. TRIMBLE. That is correct.

Senator PRYOR. Let's say you get into a situation, and you need some advice or counseling, maybe you even need some lobbying, or information that you cannot seem to acquire that is absolutely necessary to your bidding on a particular system. So you say, we've got to hire a consulting firm. So you look down the list of consultants. You look at the big ones, maybe small ones, maybe individuals. You find a consulting firm that already is doing business with the Department of Defense; they have defense contracts, they have Air Force, Navy, Army and DOD contracts. Then you find a firm that has no contracts with the Department of Defense.

Which one do you go to?

Mr. TRIMBLE. Senator Pryor, I have never observed this as an either/or situation. If we find that somebody has qualitative information, advice to us that we would like to obtain, we contact the individual and then determine whether there is a conflict of interest. It is extremely important, and it is a part of our agreement

with this individual with respect to conflict of interest—which, when done properly—and I believe it is in all cases, or most all cases done properly—should eliminate the problem, sir, that I believe you perceive.

Senator PRYOR. Well, I think the two of you have been here most of this morning, and we appreciate you staying during the entire hearing. Some of my questions to previous witnesses related to consultants working both sides of the street, working for the Department of Defense and defense contractors.

This to me looks like a conflict or a potential conflict.

Mr. ANDERS. Senator, may I comment on that?

Senator PRYOR. Yes, sir, I would love to hear your remarks.

Mr. ANDERS. I think that is not, in all due respect, a good criterion to use, because essentially—I would stick my neck out and say essentially all defense contractors by that definition would work both sides of the street. A prime contractor, by definition, sells to the United States Government. But that prime contractor, in many cases is subcontractor to a lot of other prime contractors, or other sub-subcontractors. So, this whole business is so mutually supplying of equipment and, in some cases, ideas or technologies, that just that criterion, is not one that would get to the problem that you are probably after.

Senator PRYOR. Well, all I am asking for is some form of disclosure so we know with whom we are doing business. These are all taxpayers' dollars. This Committee is an oversight Committee of the Senate.

Mr. ANDERS. As the Government witnesses said, any consultant for the United States Government has to fill out a very detailed form, telling what his associations are. There are severe penalties for not filling the form out right. There are penalties for being involved in "particular" matters, is the term used, of anything that would be a conflict of interest by that consultant.

Senator PRYOR. Those penalties, I am informed, have just been added as recently as this year.

Mr. ANDERS. It is my impression that those penalties have been there for some time—but I am not a lawyer, so I do not know. I have filled out the form for some years, and it has really worried me.

Senator PRYOR. One of these days, I will not go into it in open forum, I know you are on the Defense Science Board——

Mr. ANDERS. Yes. I am a consultant in one sense.

Senator PRYOR. I would love to talk to you about the Defense Science Board, its makeup, and how much long-range knowledge you get as a result of being on the Defense Science Board. You do not have to answer that now, but I am so curious about the Defense Science Board. I don't think I have ever met anyone on the Defense Science Board. But we will visit.

Senator Levin, I thank you.

Senator LEVIN. This sounds like a real marriage ceremony here this morning. [Laughter.]

Let me just press you a bit further about the confusion issue that is out there. We have had testimony from the services that rely on that "For Official Use Only" designation as being the guide as to whether or not documents can be released. That, we indicated ear-

lier, in my opinion, at least—and I think the services basically agree—is not much of a guide, since the DOD definition of "For Official Use Only" allows those materials to be released to contractors; so you cannot use that guide.

Now, do you agree with that? Do you agree basically with what I just said, Mr. Anders?

Mr. ANDERS. It is a big gray area.

Senator LEVIN. That is a big gray area?

Mr. TRIMBLE. No; that I agree.

Mr. ANDERS. It creates a real problem because sometimes it is okay to see it, and sometimes it is—it is very hard for our people to know when.

Senator LEVIN. Let me now just read a list of documents for which the services rely on FOUO rules. Service master plans, modernization plans, program plans in the Army, source selection plans in the Navy, procurement requests in the Air Force, cost models in the Air Force, bidders and offerors list in the Air Force, past suppliers list in the Air Force, internal Government cost estimates in the Army and the Air Force, should cost studies in the Army and the Air Force, feasibility studies in the Navy and the Air Force, life cycle cost studies in the Navy and the Air Force.

Those are just some of the documents. So we have got a whole, big long list of documents for which there is a gray area in terms of what rules, if any, govern the disclosure of those documents.

Now, to what extent, Mr. Anders, do you feel that creates a problem? Is that something that you think should be cleared up? How should it be cleared up?

Mr. ANDERS. The "For Official Use Only" aspect of that big, long list?

Senator LEVIN. Yes, that kind of gray area. We have got a pretty big gray area out there. There are a lot of documents that are in that gray area.

Mr. ANDERS. To the degree people have to certify to confusing rules on confusing documents, I think that unfairly puts them personally at risk.

Senator LEVIN. And is that now a significant degree? Is that a 5 percent problem or a 95 percent problem?

Mr. ANDERS. That is a very big worry.

Senator LEVIN. Okay. That is on the certification issue——

Mr. ANDERS. Yes, that is on the certification issue.

Senator LEVIN [continued]. Which applies later on in the process, as I understand.

Mr. ANDERS. It is coming up, I think, as Mr. Trimble said, this May.

Mr. TRIMBLE. May the 17th.

Senator LEVIN. Okay. There is uncertainty as to what part of the procurement process that is going to apply to—is that correct—whether it is the RFP and beyond, or before the RFP?

Mr. ANDERS. The marketing man somehow has a document. Is it a document he should have or should not have? If it had a big "X" on it for the ones you should not have, it would be very clear.

Senator LEVIN. But are you clear that we intended that that certification apply throughout the procurement process or only to documents that come into play after the RFP is issued?

Mr. ANDERS. The former.

Senator LEVIN. The former. You might want to check Congressional intent on that, by the way.

Mr. ANDERS. You have got us worried. We try at least to——

Senator LEVIN. You may want to check that. I think there is some at a minimum uncertainty on that question, but I am trying to get briefed by staff in one ear, as we are talking in the other.

Mr. Trimble?

Mr. TRIMBLE. I personally have taken a very strong stand, supported by, I believe, members of your staff here on the Hill, and by attorneys in the city, that it applies only on events that occur after May the 17th, 1989.

Mr. ANDERS. That is not the question he asked.

Senator LEVIN. I think we do not want to add any to the confusion, and I am going to let it rest at that. But I think there is some uncertainty as to what part of the process that certification rule applies to—not to what date it applies or starts applying; that is not what I am talking about. I am talking about what part of the procurement process it applies to. And I think I had probably better be careful, since I may have helped create that Congressional intent, that I not confuse it any further here.

But I would suggest you look into that. We would be happy to work with you and the Department of Defense on that. There may be some difference between the Department and us as to the intention on that, and we may be able to clear that up—even between now, by the way, and May.

Is there anything further that you gentlemen would like to add?

Mr. ANDERS. I would like to add one point here. Secretary Garrett gave four principles of why information should not be released. He listed number one; national security. Personally, I think that is quite adequately handled by the National Security Act, through consultants, subcontractors, everywhere. I do not think that is a problem.

He listed third—and I will skip number 2 for a moment—security of the acquisition process. We in industry are all for that. We would like a level playing field. We do not want inside information—one, because the penalties are there, and because in the long run, when the playing field is not level, it is not good for any of the competitors.

He listed number 4; the security of the competitive side from industry. I think there are strong rules and regulations on data rights and the DOD's responsibility to hold them back.

He listed number 2; the integrity of the Executive decisionmaking process. Now, I have been in the Executive Branch, and I can understand the Executive Branch's concern for not letting POMs or that kind of thing out early, or that kind of thing. But when you have such long development times for weapons systems or meeting future threats, you cannot wait until just next year, or 2 years, or even 5 years ahead, to have knowledge to really adequately apply your resources so that you will be able to respond in a competitive or even noncompetitive way when the DoD gets around to buying something to meet that threat.

So it is in this area, that I think probably industry has the biggest concern. It is such decisionmaking things that are not re-

leased, and then there are these gray area things. And, by the large amount of stuff that is not released, you increase the problem of trying to figure out what is insider and what is outsider information.

Senator LEVIN. What we are going to continue to do is to focus on that "gray area," as you phrase it, that confusion, that uncertainty. Again, we leave it to a different forum as to which documents should be released and which types should not be released. That is a different issue—an important issue—perhaps more important—I think it obviously is to you—than the issue of the confusion and the uncertainty. But the confusion and uncertainty and conflict issue is important to us and we believe has contributed to an aura, an atmosphere out there which is intolerable and which is, frankly, unfair to you folks as well as to the taxpayers. You ought to know which documents can be disclosed and which ones cannot be disclosed. Even if you disagree with the conclusion, you at least at a minimum ought to know—yes, we are entitled to that, no, we are not entitled to that—and it is very clear from this morning's testimony and lots of other sources that there is just too much uncertainty as to what is and what is not disclosable.

We are determined that we are going to bring some light into that gray area. We are going to let you folks fight the question as to what should be on which side of the line, and if we can be helpful in that area, we would be happy to try. But one thing we are going to be more determined to do is to make sure there is a line, so that we do not put people at peril and at risk in trying to get information. They ought to know whether they are entitled to it or not. The one thing that should not happen is that they don't know whether they are entitled to it or not, because that creates, it seems to me, a very unpleasant and unhappy atmosphere for the taxpayers, for the industrial setting as a whole.

We thank you and the other witnesses for your testimony, and we will stand adjourned.

[Whereupon, at 1:01 p.m., the Subcommittee was adjourned.]

APPENDIX

STATEMENT BY HON. MICHAEL P.W. STONE, ARMY ACQUISITION EXECUTIVE, UNDER SECRETARY OF THE ARMY

Mr. Chairman:

I am pleased to appear before the Subcommittee on Oversight of Government Management.

The baseline principles and rules for release of any governmental information derive from the Freedom of Information Act (5 U.S. Code 552) and the Privacy Act of 1974 (5 U.S. Code 552a) as implemented in various federal circulars and directives. In general the policy regarding information in the possession of the Government is that it should be made available to the public.

Moreover, the Competition in Contracting Act (P.L. 98-369) mandates that we reach out to as many competent and qualified sources as possible and assure that they have a chance to participate in a full and open competitive process. This also favors broader communication of government information to the public. These statutes and implementing rules, however, also allow for the discretionary nondisclosure of information when necessary: (a) to protect national security, or (b) to protect individual rights to privacy, or (c) to protect proprietary data, or (d) to maintain the integrity of discretionary Government decision-making processes, including the procurement process itself.

These tenets form the overriding framework for all of our disclosure and nondisclosure policies and procedures. While the tenets are succint, their application by various functional specialists at specific times and under changing situations is complex. This leads to the large number of detailed guidance documents you have been given.

There clearly are conflicting objectives at work in determining the propriety of releasing information at specific points in the acquisition process. We want to inform industry and academia fully about our requirements and our interest in generic technology in order to guide their investment strategies and internal priorities and to stimulate broad interest early on. Likewise, we try to circulate draft Requests for Proposal (RFPs) to provide a check on the reasonableness of our acquisition objectives and, ultimately, to get the best value for our dollars through competition. On the other hand, we must guard against premature release of data which is subject to change or which could be used to preempt or subvert the normal decision-making process. And some information should never be made available to the general public because it is clearly used in making sensitive, often controversial management decisions. Access to this type of data could be used to influence Defense, Executive, or Congressional decisions

inappropriately. Examples of such data include: the Program Objective Memorandum (POM), the Program Budget Decisions (PBDs), and specific source selection data.

As the Army's Acquisition Executive, I have overall functional management responsibility for the actions of the Army's acquisition and contracting personnel, both civilian and military. They are responsible for the annual execution of over 4 million procurement actions, valued at more than $30 billion and involving transactions with thousands of business entities ranging in size from unincorporated individuals to universities and to the Defense Top Ten. Procurement actions range from simple telephonic or automated purchase orders to complex major system development efforts. These actions are controlled by over 4,000 laws and related regulations.

The acquisition process involves numerous data bases that pertain to functional areas, e.g., program planning and budget information; requirements or needs documents; technical data and specifications; acquisition planning information; source selection data; and other contract-specific information. The data bases that impact on "acquisition" are complex and diverse, both inherently and in their application. Decisions regarding the release of material in the data bases are made on a program-by-program and case-by-case basis and are very

sensitive to the type of procurement action, the competitive environment, and the chronology of procurement events. For these reasons, it is difficult to prescribe specific, inflexible rules which cover every situation. We rely heavily and, I believe, appropriately on the expertise, integrity, and common sense of our personnel. As Dr. Costello says in his statement, broad discretion in this matter, within the framework of the law, should be granted to program management personnel.

Industry's response to a recent Department of Defense survey on the subject of release of information was helpful, but in its entirety was not necessarily in the best interests of the Government or the acquisition process. The large industry associations advocated essentially a "decriminalization" of the information exchange process as part of a one-way system. Their proposal was to make virtually all internal government planning, budgetary and program management information documents accessible to the public, except for data that industry provides to the Government, which is to be protected at all cost. This "system" would have the immediate salutary effect of eliminating any criminal or unethical taint of obtaining such data, since it would be officially treated as public information. Unfortunately, such a wholesale release of information

is not in the best interest of the acquisition process. Quite simply, it could and probably would subvert the decision-making process.

I believe that we have sufficient rules and regulations concerning the release of information. If there is any "inadequacy," it may be in the packaging and delivery of this guidance to the internal and external "acquisition" communities. Each functional discipline is guided by a different series of regulations established for different purposes and sensitive to the nature of that function and its need for release guidance. For example, professionals in comptroller and finance fields (AR 37 Series) are not necessarily aware of the rules relating to acquisition and contracting documents (AR 70 and 715 Series). While Standards of Conduct regulations and policies clearly apply to all functional disciplines, their specific application to routine actions can also vary with each discipline. It is admittedly difficult, if not impossible, to go to one or two documents and find all the rules governing the protection and releasability of every conceivable type of information affecting the acquisition function. And there is a lack of specific examples which, even if incomplete, would help our people in their application of the rules. We can and will do a better job in this area.

I would be remiss if I told you that we have no problems, since both the Committee and I have evidence to the contrary. But I frankly do not believe the few isolated problems are evidence of a pervasive breakdown. While the Army has experienced some cases in which information was either purposefully or inadvertently provided to contractors, they have been few in number; they do not suggest a systemic problem within the procurement process; and we have vigorously pursued appropriate civil, criminal, and administrative remedies. We can improve our guidance, training, and our enforcement procedures. We are working to do that right now in joint efforts with civilian agencies, the Office of Federal Procurement Policy, the Joint DoD Task Force reviewing DoD wide policies, procedures and practices, and finally with industry. Within the Army, we are also reviewing many of the documents, data elements and information related to acquisition to further clarify and consolidate the rules controlling their release. There probably are steps we can take to improve awareness through training, special markings, increased management attention and participation in release decisions, and other interaction with the private sector. I do not believe, however, that there should be any major changes in our overall policies regarding the release of information.

Clearly, we must also take a hard line with offenders and establish and enforce a straightforward, common sense code of ethics. Within the Army we have taken a number of steps to improve the education of our own employees and contractors and to insure top management attention and oversight of this critical area of integrity. I would like to mention just a few of the measures we have instituted, many of which were in place well prior to the Ill Wind investigation.

We have long had a cadre of ethics counselors at all organizational levels. These counselors, placed in our Judge Advocate and General Counsel offices, advise and educate active and retired personnel on all standards of conduct matters, including release of information. In recent years we also have substantially increased our procurement fraud staff and have assigned procurement fraud advisors at all significant contracting activities.

The Army has telephone hot lines and also newsletters educating our acquisition professionals and other personnel on the "do's and don'ts" in the complex world of acquisition. We have expanded significantly our efforts to train both our procurement fraud agents and our contracting personnel on how to identify and report or investigate suspected illegal or improper activity.

In early 1986 Army Secretary John Marsh established the Army Task Force on Fraud, Waste and Abuse. It is chaired by the Assistant Secretary of the Army (Research, Development and Acquisition), my Deputy Acquisition Executive. The Army's top level officials serve as permanent members, including the Commander of our Criminal Investigation Command, the Inspector General, The General Counsel, the Auditor General and the Judge Advocate General.

We have instituted a comprehensive visitor registration and clearance system at Department of Army Headquarters. Similiar visitor registration systems are the norm in major Army field contracting activities. I realize that this practice has many detractors, but we consider it a reasonable and appropriate measure to protect the Government from conflicts of interest or compromising situations, both real and perceived.

Our efforts are paying off. The number of Army procurement fraud cases has increased 700 percent since 1984; the number of Army suspensions, debarments and related settlements has quadrupled in that same period. We do not believe these statistics indicate an increase in illegal or improper actions; but rather they reflect a heightened awareness of the problem and an increased diligence in ferreting it out. We would be naive to think or claim that

we can devise a foolproof, leakproof "system" to control the actions of thousands of employees and thousands of private sector citizens with a desire to know, but we believe our efforts, which are extensive and well publicized, will minimize violations both in the government and in industry.

The recently enacted procurement integrity requirements in the Office of Federal Procurement Policy Act Amendment include a mechanism of certifications for each significant contract action and provide administrative, civil and criminal penalties for violations. I understand that implementing regulations in the FAR System are soon to be published for public comment in the Federal Register and that the Office of Federal Procurement Policy will be issuing other guidance.

Collectively, I believe, we are aware of the problems we face and are dealing with them rationally and with a sense of urgency. We will make it harder to do wrong, and hopefully through improved education and example we can reduce the errors in judgment due to ignorance or misunderstanding.

The Army fully supports the need for unambiguous and uniform policies governing the exchange of information between all elements of Government and industry throughout the acquisition process. We must be able to clearly define that information which must be protected to prevent compromise of internal Government decision-making processes or to protect competitive, arms-length contracting procedures.

Thank You.

STATEMENT OF

THE HONORABLE H. LAWRENCE GARRETT, III
UNDER SECRETARY OF THE NAVY

MR. CHAIRMAN, AND MEMBERS OF THE SUBCOMMITTEE. I WELCOME THIS OPPORTUNITY TO JOIN MY FELLOW MILITARY DEPARTMENT ACQUISITION EXECUTIVES THIS MORNING, TO REVIEW WITH YOU ISSUES PERTAINING TO DISCLOSURE TO PRIVATE INDUSTRY OF GOVERNMENT PROCUREMENT AND PLANNING INFORMATION.

AS WE HAVE REVIEWED DEPARTMENT OF THE NAVY POLICIES AND PROCEDURES IN THIS AREA, THE FIRST THING THAT HAS BECOME CLEAR IS THAT OUR REGULATORY FRAMEWORK FOR THE SAFEGUARDING OF "INSIDE INFORMATION" IS COMPLEX. IT IS COMPRISED OF STATUTES, GOVERNMENT-WIDE AND DEPARTMENT OF DEFENSE DIRECTIVES AND INSTRUCTIONS, AND OUR OWN NAVY DEPARTMENT INSTRUCTIONS AND COMMAND POLICIES. MOREOVER, THIS FRAMEWORK HAS EVOLVED OVER TIME.

NEVERTHELESS, I BELIEVE OUR EXISTING FRAMEWORK DOES REFLECT CERTAIN GENERAL PRINCIPLES WHICH BALANCE THE GOVERNMENT'S INTERESTS AS A CUSTOMER IN THE DEFENSE MARKETPLACE, WITH THE INTERESTS OF DEFENSE MANUFACTURERS. IN ORDER TO UNDERSTAND THE PRINCIPLES WHICH DO AND SHOULD GOVERN OUR REGULATORY SCHEME, WE MUST FIRST UNDERSTAND THE EXTENT TO WHICH THE INTERESTS OF THE GOVERNMENT CUSTOMER AND ITS INDUSTRIAL SUPPLIERS ARE COMMON, AND THE EXTENT TO WHICH THEY DIVERGE.

BECAUSE OF THE NATURE OF THE DEFENSE MARKETPLACE, WITH ITS ENORMOUS RESOURCE INVESTMENTS, EXTENDED RESEARCH AND DEVELOPMENT EFFORTS AND LENGTHY PERIODS REQUIRED TO GET COMPLEX WEAPONS SYSTEMS INTO PRODUCTION, GOVERNMENT AND INDUSTRY SHARE AN INTEREST IN THE AFFIRMATIVE PROVISION OF SUFFICIENT RELEVANT INFORMATION REGARDING THE GOVERNMENT'S FUTURE NEEDS TO ENABLE INDUSTRY REASONABLY TO PLAN TO MEET THEM. HOWEVER, IT MUST RECOGNIZED THAT THE DEFENSE MARKETPLACE IS A COMPETITIVE MARKETPLACE, AND THE CORPORATIONS WHICH CHOOSE TO COMPETE IN IT HAVE PRIVATE OBLIGATIONS TO THEIR SHAREHOLDERS WHICH INEVITABLY CREATE SOME TENSION WITH THE PUBLIC OBLIGATIONS THE GOVERNMENT MUST MEET TO THE AMERICAN PEOPLE.

IN DISSEMINATING GOVERNMENT PLANNING AND PROCUREMENT INFORMATION, THE GOVERNMENT'S NEEDS AS A CUSTOMER TO SHARE INFORMATION WITH ITS SUPPLIERS IS CONSTRAINED BY AT LEAST FOUR BASIC REQUIREMENTS:

FIRST, TO PROTECT THE NATIONAL SECURITY AGAINST RELEASE OF INFORMATION THAT WOULD UNDULY BENEFIT POTENTIAL ADVERSARIES;

SECOND, TO PROTECT THE INTEGRITY OF THE DELIBERATIVE AND DECISION-MAKING PROCESS WITHIN THE EXECUTIVE BRANCH, AND MOST PARTICULARLY THE INTEGRITY OF THE PROCESS BY WHICH THE PRESIDENT'S BUDGET IS DEVELOPED;

THIRD, TO PROTECT THE INTEGRITY OF THE COMPETITIVE PROCUREMENT PROCESS; AND

FOURTH, TO PROTECT SENSITIVE PROPRIETARY INFORMATION SUBMITTED TO THE GOVERNMENT BY PRIVATE INDUSTRY.

THESE NEEDS ARE, QUITE FRANKLY, SOMEWHAT DIVERGENT FROM THE NEEDS OF THOSE WHO COMPETE IN THE DEFENSE ENVIRONMENT. AT THE SAME TIME THAT INDUSTRIAL SUPPLIERS SEEK INFORMATION TO BETTER ENABLE THEMSELVES TO MEET THE GOVERNMENT'S NEEDS, EACH SUPPLIER ALSO SEEKS INFORMATION IN ORDER TO INFLUENCE THOSE NEEDS, AND TO GAIN ADVANTAGE OVER ITS COMPETITORS. THIS IS BY NO MEANS NECESSARILY IMPROPER; INDEED, WITHIN THE LIMITS OF LAW AND REGULATION, MARKETING AND INFORMATION GATHERING ACTIVITIES OF PRIVATE CORPORATIONS ARE INDISPENSABLE TO THE PROPER FUSION OF GOVERNMENT'S REQUIREMENTS WITH INDUSTRY'S CAPABILITIES.

NONETHELESS, WE MUST ALWAYS BE ALERT TO THE FACT THAT THE INTERESTS OF GOVERNMENT AND INDUSTRY ARE NOT ALWAYS THE SAME. HOW THEN, DOES OUR REGULATORY SCHEME BALANCE THESE COMPETING INTERESTS?

FIRST AND, IN MY VIEW, FOREMOST -- BY RELEASING VAST AMOUNTS OF INFORMATION THROUGH CLEAR, OFFICIAL CHANNELS.

THESE INCLUDE:

o BRIEFINGS FOR POTENTIAL COMPETITORS WITH REGARD TO PARTICULAR REQUIREMENTS;

o SEMINARS, SPEECHES AND BRIEFINGS AT TRADE AND PROFESSIONAL ASSOCIATIONS;

o TESTIMONY IN OPEN CONGRESSIONAL HEARINGS BY DEPARTMENTAL OFFICIALS REGARDING THE PARTICULARS OF THE PRESIDENT'S BUDGET AND NAVY/MARINE CORPS PROGRAMS;

o ANNUAL PUBLICATION THROUGH OUR COMPETITION ADVOCATE GENERAL OF LONG-RANGE ACQUISITION ESTIMATES, A COPY OF WHICH I WOULD BE HAPPY TO SUBMIT FOR THE RECORD;

o CIRCULATION OF DRAFT SPECIFICATIONS AND REQUESTS FOR PROPOSALS TO POTENTIAL OFFERORS FOR COMMENT; AND

o FINALLY, RESPONSES TO SPECIFIC REQUESTS FROM INDUSTRY, BOTH THROUGH THE FREEDOM OF INFORMATION ACT AND THROUGH INFORMAL REQUESTS.

CONCURRENTLY, OUR RULES ALSO BALANCE THESE INTERESTS BY RESTRICTING DISSEMINATION AT CERTAIN TIMES OF CERTAIN

INSIDE INFORMATION. LET ME SUMMARIZE, AS SUCCINCTLY AS POSSIBLE, BY DISCUSSING THE RULES AND CONCERNS WHICH PERTAIN TO PLANNING AND BUDGETARY INFORMATION, INFORMATION PERTAINING TO NEEDS AND REQUIREMENTS, AND INFORMATION PERTAINING TO PARTICULAR PROCUREMENTS.

o NAVY PLANNING AND BUDGETARY INFORMATION, LIKE THAT OF THE OTHER MILITARY DEPARTMENTS, IS GENERALLY OF THREE TYPES:

-- THE PROGRAM OBJECTIVE MEMORANDA, WHICH ARE PREPARED AND SUBMITTED TO THE OFFICE OF THE SECRETARY OF DEFENSE EVERY OTHER YEAR, OUTLINE RESOURCE ALLOCATIONS MADE WITHIN EACH SERVICE PURSUANT TO DEFENSE GUIDANCE ISSUED BY THE SECRETARY OF DEFENSE. THESE DOCUMENTS ARE CLASSIFIED SECRET BECAUSE OF THE RISK TO THE NATIONAL SECURITY WHICH WOULD BE POSED BY THEIR RELEASE TO POTENTIAL ADVERSARIES. AS MILITARY DEPARTMENT SUBMISSIONS ASSOCIATED WITH PREPARATION OF THE PRESIDENT'S BUDGET, THEY ARE ALSO PROPERLY WITHHELD FROM DISTRIBUTION OUTSIDE THE GOVERNMENT UNDER OFFICE OF MANAGEMENT AND BUDGET GUIDANCE IN ORDER TO PROTECT THE INTEGRITY OF THE BUDGET PROCESS.

-- THE FIVE-YEAR DEFENSE PLAN, BASED UPON APPROVED

POM SUBMISSIONS, IS CLASSIFIED SECRET AND NUMERICALLY CONTROLLED FOR THE SAME NATIONAL SECURITY REASONS AS THE POM ITSELF.

-- FINALLY, THE DOCUMENTS WHICH DIRECTLY SUPPORT PREPARATION OF THE PRESIDENT'S BUDGET, SUCH AS PROGRAM ELEMENT DESCRIPTIVE SUMMARIES, BUDGET ESTIMATE SUBMISSIONS, PROGRAM DECISION MEMORANDA AND PROGRAM BUDGET DECISIONS, ARE, IN MANY CASES, CLASSIFIED UP TO THE SECRET LEVEL FOR NATIONAL SECURITY REASONS, AND IN ALL CASES ARE PROPERLY WITHHELD FROM PUBLIC RELEASE UNDER THE PREVIOUSLY MENTIONED OMB GUIDANCE IN ORDER TO PROTECT THE BUDGET PROCESS.

o INFORMATION PERTAINING TO NAVY NEEDS AND REQUIREMENTS, SUCH AS JUSTIFICATIONS FOR MAJOR SYSTEM NEW STARTS AND APPROVED OPERATIONAL REQUIREMENTS, MAY BE RELEASED TO CONTRACTORS OR POTENTIAL CONTRACTORS HAVING THE SECURITY CLEARANCE REQUIRED AND THE NEED TO KNOW. RELEASE OF THIS INFORMATION IS MADE THROUGH THE NAVY ACQUISITION, RESEARCH AND DEVELOPMENT INFORMATION CENTER WITH THE REVIEW AND CONCURRENCE OF THE PROGRAM MANAGER. OUR WARFARE MASTER PLANS, WHICH PROVIDE LONG-RANGE VIEWS AND PLANS BEYOND A TEN-YEAR TIMEFRAME, ARE SUBJECT TO HEIGHTENED NATIONAL SECURITY CONCERN, AND MAY BE RELEASED TO CONTRACTORS ONLY WITH THE CONCURRENCE

OF THE DIRECTOR OF NAVAL WARFARE, A VICE ADMIRAL. SIMILARLY, OUR SYSTEM THREAT ASSESSMENT REPORTS, OR THREAT ANALYSES PERTAINING TO A PARTICULAR PROGRAM, ARE SUBJECT TO GREATER SECURITY CONCERN BECAUSE THEY MAY CONTAIN SENSITIVE INTELLIGENCE INFORMATION, AND MAY BE RELEASED TO CONTRACTORS ONLY WITH THE CONCURRENCE OF THE NAVAL TECHNICAL INTELLIGENCE CENTER.

o INFORMATION PERTAINING TO PARTICULAR PROCUREMENTS IS GOVERNED BY A NUMBER OF REGULATIONS, AND MAY BE RESTRICTED FROM RELEASE FOR A NUMBER OF REASONS. FOR EXAMPLE, SUCH INFORMATION MAY BE RESTRICTED:

-- BECAUSE OF ITS SECURITY CLASSIFICATION OR OTHER DATA PERTAINING TO SENSITIVE TECHNOLOGIES;

-- BECAUSE IT INCORPORATES FINANCIAL AND BUDGETARY DATA PERTAINING TO THE PROGRAM WHICH, IF KNOWN TO POTENTIAL OFFERORS, MIGHT PLACE THE GOVERNMENT AT A DISADVANTAGE IN OBTAINING THE BEST PRICE;

-- BECAUSE IT CONTAINS SENSITIVE PROPRIETARY INFORMATION SUBJECT TO THE TRADE SECRETS ACT OR OTHER RESTRICTIONS;

-- BECAUSE RELEASE MIGHT COMPROMISE THE GOVERNMENT'S INTERESTS IN THE INDEPENDENCE AND OBJECTIVITY OF ITS OWN INTERNAL DECISION-MAKING PROCESS; OR

-- BECAUSE RELEASE PRIOR TO SOURCE SELECTION MIGHT COMPROMISE THE INTEGRITY OF A COMPETITIVE ACQUISITION.

MR. CHAIRMAN, THE RULES WHICH PERTAIN TO EACH OF THESE CONCERNS ARE DISCUSSED WITH REFERENCE TO PARTICULAR DOCUMENTS IN THE WRITTEN MATERIALS WE HAVE PROVIDED IN RESPONSE TO YOUR LETTER OF DECEMBER 16, 1988. I RESPECTFULLY ASK THAT THOSE MATERIALS BE INCORPORATED HEREIN BY REFERENCE AND INCLUDED WITH THIS STATEMENT SUITABLY WITHIN THE RECORDS OF THIS HEARING.

WITH THIS BACKGROUND IN MIND, MR. CHAIRMAN, LET ME NOW TURN TO THE THREE SPECIFIC QUESTIONS RAISED IN YOUR LETTER OF INVITATION TO THIS HEARING.

FIRST, YOU ASK WHETHER EXISTING DEPARTMENT OF DEFENSE AND NAVY RULES AND REGULATIONS GIVE ADEQUATE GUIDANCE TO NAVY PERSONNEL AND PRIVATE CONTRACTORS AND CONSULTANTS AS TO WHAT TYPES OF INFORMATION MAY AND MAY NOT BE DISCLOSED. IN MY VIEW, OUR EXISTING RULES AND REGULATIONS, TAKEN TOGETHER, DO PROVIDE ADEQUATE GUIDANCE FOR OUR PERSONNEL, AND FOR CONTRACTOR AND CONSULTANT PERSONNEL WHO ARE INTERESTED IN COMPLYING WITH THEM AND TAKE THE TIME TO DO SO. IN MOST CIRCUMSTANCES, THE PROPRIETY OF A RELEASE OF INFORMATION

TO CONTRACTOR OR CONSULTANT PERSONNEL WILL BE APPARENT FROM THE CONTEXT IN WHICH IT OCCURS, SUCH AS AT A PROSPECTIVE BIDDERS' CONFERENCE OR THROUGH A WRITTEN REQUEST FOR COMMENTS ON A DRAFT REQUEST FOR PROPOSALS. IF IN DOUBT, CONTRACTOR AND CONSULTANT PERSONNEL CAN CLARIFY THE PROPRIETY OF ANY RELEASE SIMPLY BY RAISING THE QUESTION.

A SEPARATE, BUT RELATED QUESTION IS WHETHER OUR PERSONNEL HAVE SUFFICIENT WORKING FAMILIARITY WITH THE MANY SOURCES OF GUIDANCE THAT WE HAVE IN THIS AREA TO ENABLE THEM TO APPLY THAT GUIDANCE PROPERLY AND CONSISTENTLY GIVEN THE MANY COMPETING DEMANDS THEY FACE. ALLEGATIONS OF IMPROPER RELEASE OF INFORMATION ARE INFREQUENT; AS WE REPORTED IN RESPONSE TO YOUR LETTER OF DECEMBER 16, MR. CHAIRMAN, WE HAVE IDENTIFIED ONLY SIX DISCIPLINARY ACTIONS REGARDING NAVY EMPLOYEES FOR IMPROPER DISCLOSURE OF PLANNING OR PROCUREMENT INFORMATION DURING THE PAST FIVE YEARS -- OTHER THAN THE "ILL WIND" CASES -- AND OUR REVIEW SUGGESTS THAT ALLEGATIONS OF SUCH DISCLOSURES ARE SIMILARLY RARE.

ON THE OTHER HAND, AS I SAID EARLIER, REGULATIONS IN THIS AREA ARE MANY AND COMPLEX. LAST FALL, I ASKED THE NAVAL INSPECTOR GENERAL TO REVIEW TRAINING WITHIN OUR DEPARTMENT REGARDING STANDARDS OF CONDUCT AND SAFEGUARDING OF ACQUISITION INFORMATION, WITH EMPHASIS ON OUR MAJOR

ACQUISITION COMMANDS. IN HIS REPORT, THE INSPECTOR GENERAL NOTED THAT WHILE SUBSTANTIAL TRAINING EFFORTS ARE ONGOING, OUR SYSTEM WOULD BE ENHANCED BY DEVELOPMENT OF A UNIFORM CURRICULUM ON THESE SUBJECTS, AND INSTITUTION OF MANDATORY INITIAL AND REFRESHER TRAINING FOR ALL PERSONNEL ACCORDING TO THAT UNIFORM CURRICULUM. WE PLAN TO IMPLEMENT THOSE RECOMMENDATIONS, AND I BELIEVE THAT THE MATERIAL WE PREPARED IN RESPONSE TO THIS COMMITTEE'S REQUEST WILL PROVIDE A USEFUL STARTING POINT FOR OUR EFFORTS.

YOU NEXT ASKED WHAT PROBLEMS, IF ANY, THE NAVY HAS ENCOUNTERED IN MONITORING AND ENFORCING DISCLOSURE RULES AND REGULATIONS. WE CONTINUE TO BELIEVE, BASED UPON WHAT INFORMATION HAS SO FAR BECOME AVAILABLE, THAT THE "ILL WIND" CASES REFLECT CONSCIOUS MISCONDUCT BY ISOLATED INDIVIDUALS WITHIN OUR ACQUISITION SYSTEM, AND THAT OUR PERSONNEL GENERALLY UNDERSTAND AND ADHERE TO EXISTING RULES AND REGULATIONS. AS I INDICATED A MOMENT AGO, WE ARE TAKING THE INITIATIVE TO STANDARDIZE AND EXTEND OUR TRAINING IN THIS AREA. ADDITIONALLY, WE HAVE NOTED THAT THE OFFICE OF FEDERAL PROCUREMENT POLICY ACT AMENDMENTS ENACTED AT THE END OF LAST SESSION ESTABLISHED NEW CRIMINAL OFFENSES FOR THE IMPROPER DISCLOSURE AND RECEIPT OF SOURCE SELECTION INFORMATION. WE ARE PRESENTLY DEVELOPING AN INITIATIVE TO DEDICATE ASSETS FROM THE NAVAL INVESTIGATIVE SERVICE TO OUR SYSTEMS COMMANDS -- MY PROGRAM EXECUTIVE

OFFICERS -- TO ENHANCE THE PROFESSIONALISM AND TIMELINESS OF OUR INVESTIGATIONS OF ALLEGATIONS PERTAINING TO THE INTEGRITY OF THE ACQUISITION PROCESS. AGENTS ASSIGNED TO THE SYSTEMS COMMANDS WILL PROVIDE ADDITIONAL FRAUD AWARENESS TRAINING SUPPORT AS WELL AS INVESTIGATIVE EFFORT.

FINALLY, YOU ASKED WHAT MEASURES, IF ANY, THE NAVY IS CONTEMPLATING OR UNDERTAKING TO CLARIFY AND/OR STRENGTHEN EXISTING DISCLOSURE RULES AND REGULATIONS. FIRST, AS I PREVIOUSLY NOTED, WE BELIEVE THAT THE COVERAGE OF EXISTING GUIDANCE IS GENERALLY SUFFICIENT TO OUR NEEDS. WE WILL, OF COURSE, WORK WITH THE OFFICE OF THE UNDERSECRETARY OF DEFENSE FOR ACQUISITION AND THE OTHER MILITARY DEPARTMENTS TO REVIEW CURRENT POLICIES, PROCEDURES AND PRACTICES AND DETERMINE ANY DEPARTMENT OF DEFENSE-WIDE GUIDANCE WHICH MAY BE APPROPRIATE. MOREOVER, AS I EARLIER INDICATED, WE WILL MOVE OUT TO MAKE THE CONTENT OF OUR RULES AND REGULATIONS MORE ACCESSIBLE TO OUR PERSONNEL THROUGH DEVELOPMENT OF A STANDARD TRAINING CURRICULUM AND MANDATORY INITIAL AND REFRESHER TRAINING. WE BELIEVE THESE INITIATIVES WILL STRENGTHEN OUR ABILITY TO BALANCE THE LEGITIMATE INTERESTS OF THE NAVY AND OUR INDUSTRIAL SUPPLIERS.

IN CONCLUSION, MR. CHAIRMAN, I WOULD LIKE TO SOUND A PERSONAL NOTE OF CAUTION. I KNOW THAT THE DEPARTMENTS

OF THE ARMY AND AIR FORCE RESPONDED TO THE SAME QUESTIONS THE COMMITTEE PROPOUNDED TO THE NAVY DEPARTMENT. ALTHOUGH I HAVE NOT REVIEWED THEIR RESPONSES IN DETAIL, I HAVE NO DOUBT THAT THEY MAY REVEAL PROCEDURAL DIFFERENCES BETWEEN THE DEPARTMENTS WITH RESPECT TO THE HANDLING OF CERTAIN DOCUMENTS UNDER CERTAIN CIRCUMSTANCES. I KNOW THAT FOR SOME, THE EXISTENCE OF SUCH DIFFERENCES IN AND OF ITSELF MAY BE CAUSE FOR REFORM. I WOULD URGE THAT THIS COMMITTEE ASSESS ANY DIFFERENCES IT MAY PERCEIVE AMONG THE MILITARY DEPARTMENTS NOT ONLY IN TERMS OF AN ABSTRACT DESIRE FOR UNIFORMITY, BUT ALSO IN TERMS OF THE REAL NEEDS OF GOVERNMENT AND INDUSTRY I HAVE MENTIONED THIS MORNING, AND THE NEED TO CONSOLIDATE THE MANY REFORMS ALREADY INITIATED IN OUR ACQUISITION SYSTEM IN RESPONSE TO THE PACKARD COMMISSION, THE GOLDWATER-NICHOLS ACT AND OTHER MEASURES. LET US FIX THAT, AND ONLY THAT, WHICH IS TRULY BROKEN.

THANK YOU VERY MUCH.

STATEMENT BY

HONORABLE JOHN J. WELCH, JR.

ASSISTANT SECRETARY OF THE AIR FORCE (ACQUISITION)

MR CHAIRMAN, I THANK YOU AND THE MEMBERS OF THE SUBCOMMITTEE FOR THE OPPORTUNITY TO PRESENT MY VIEWS ON THE EXCHANGE OF INFORMATION BETWEEN GOVERNMENT AND INDUSTRY IN THE ACQUISITION PROCESS. AS THE AIR FORCE ACQUISITION EXECUTIVE AND SENIOR PROCUREMENT EXECUTIVE, I SHARE THE CONCERNS OF THE SUBCOMMITTEE AND OTHER MEMBERS OF CONGRESS THAT OUR ACQUISITION PROCESS MUST BE AS OPEN, FAIR, AND EFFECTIVE AS WE CAN MAKE IT, WITHIN THE BOUNDS OF REASONABLE EFFICIENCY FOR BOTH GOVERNMENT AND INDUSTRY. IT MUST MAXIMIZE COMPETITIVENESS, CONSIDERATION OF ALTERNATIVE APPROACHES, AND PERFORMANCE, WHILE MINIMIZING BOTH OPPORTUNITIES AND MOTIVATIONS TO OBTAIN UNFAIR ADVANTAGE FROM SO-CALLED "INSIDER INFORMATION".

AS WE DISCUSS THESE ISSUES, WE NEED TO BEAR IN MIND THAT DEFENSE ACQUISITION IS NOT HOMOGENEOUS. THE FIVE MILLION AIR FORCE ACQUISITIONS PER YEAR RANGE FROM OVER FOUR MILLION SMALL PURCHASE ACTIONS TO A FEW HUNDRED COMPLEX SYSTEMS ACQUISITIONS, IN WHICH THE TOP TEN PROGRAMS REPRESENT 38 PERCENT OF THE RESEARCH AND DEVELOPMENT AND PROCUREMENT BUDGET FOR FISCAL YEAR 1989.

MY TESTIMONY TODAY WILL FOCUS ON THE COMPLEX AND FORMAL END OF THIS SPECTRUM AND ON COMPETITIVE ACQUISITIONS CONDUCTED UNDER FORMAL SOURCE SELECTION PROCEDURES. MOST OF THESE COMPLEX ACTIONS ARE ACCOMPLISHED AT THE PROGRAM EXECUTIVE OFFICER LEVEL WITHIN OUR THREE ACQUISITION COMMANDS: AIR FORCE SYSTEMS COMMAND, AIR FORCE LOGISTICS COMMAND, AND AIR FORCE COMMUNICATIONS COMMAND. HOWEVER, AS WE CONTINUALLY REVIEW OUR SYSTEM WITH THESE LARGE DOLLAR VALUE, HIGH-INTEREST ACQUISITIONS IN MIND, BOTH THE CONGRESS AND THE EXECUTIVE BRANCH MUST NOT UNNECESSARILY OR INADVERTENTLY INCREASE COMPLEXITY, LENGTHEN LEAD TIMES, OR REQUIRE EXCESSIVE DOCUMENTATION IN THE LOWER DOLLAR, HIGHER VOLUME END OF THE SPECTRUM. TO DO SO WOULD REDUCE COMPETITIVENESS AND LIMIT MARKET OPPORTUNITIES FOR SMALL AND SMALL DISADVANTAGED BUSINESSES.

AS IN MOST ACQUISITION MATTERS, THE KEY IS STRIKING AN APPROPRIATE BALANCE. ON THE ONE HAND, WE WANT CLEAR AND ENFORCEABLE LAWS, POLICIES, AND REGULATIONS. ON THE OTHER HAND, WE WANT EFFICIENCY, LATITUDE FOR EXERCISING SOUND JUDGMENT, AND RELIANCE ON THE DEMONSTRATED KNOWLEDGE AND INTEGRITY OF THE OVERWHELMING MAJORITY OF OUR ACQUISITION PERSONNEL.

AS I DISCUSS THE MORE COMPLEX ACQUISITIONS, IT MAY BE USEFUL TO THINK ABOUT THE PROCESS FROM THE BEGINNING OF A REQUIREMENT THROUGH CONTRACT AWARD IN TERMS OF THREE ROUGHLY DEFINED SEGMENTS. THESE SEGMENTS VARY IN LENGTH, OVERLAP TO SOME DEGREE, AND MAY INVOLVE DIFFERING PLAYERS AND MULTIPLE ITERATIONS.

THE FIRST SEGMENT IS FROM THE BEGINNING OF AN IDENTIFIABLE OPERATIONAL NEED, THROUGH THE INITIAL BUDGETING AND FUNDING, UP TO THE POINT WHEN DOCUMENTED EFFORT BEGINS ON DEVELOPING ACQUISITION STRATEGIES AND PLANS AND PREPARATION BEGINS ON DRAFT STATEMENTS OF WORK, SPECIFICATIONS, AND OTHER CONTRACTUAL DOCUMENTS. THIS SEGMENT MAY COVER MANY YEARS AND INVOLVE A LARGE NUMBER OF PARTICIPANTS FROM DIVERSE ELEMENTS OF BOTH GOVERNMENT AND INDUSTRY. THIS SEGMENT IS NOT -- AND PROBABLY CANNOT AND SHOULD NOT BE -- AS TIGHTLY LEGISLATED AND REGULATED AS LATER STAGES OF THE PROCESS. TO ATTEMPT TO DO SO MIGHT WELL INHIBIT NEEDED TECHNICAL INTERCHANGE AND STIFLE INNOVATION AND INITIATIVE BY INTERFERING WITH THE PROCESS OF MELDING WHAT IS NEEDED OPERATIONALLY WITH WHAT IS POSSIBLE AND AFFORDABLE TECHNICALLY.

DURING THIS PART OF THE PROCESS, I BELIEVE WE NEED TO BE AS OPEN AND COMMUNICATIVE AMONG ALL PARTICIPANTS -- INCLUDING INDUSTRY, USERS, TESTERS, AND SUPPORTERS -- AS WE CAN BE, SUBJECT TO STRIKING A NECESSARY BALANCE BETWEEN LEGITIMATE, COMPETING NEEDS. SOME OF THE AREAS FOR STRIKING THIS BALANCE ARE AS FOLLOWS:

- INDUSTRY NEEDS INFORMATION AND INSIGHT INTO OUR PLANS IN ORDER TO BE RESPONSIVE AND INVEST THEIR OWN AND THE GOVERNMENT'S RESOURCES WISELY. THEY HAVE A NATURAL DESIRE TO KNOW, AS EARLY AS POSSIBLE, WITH AS HIGH A DEGREE OF CONFIDENCE AS POSSIBLE, WHAT WE WILL REQUIRE AND WHEN WE WILL FUND IT. IN OTHER WORDS, THEY NEED AND DESIRE EARLY INSIGHT INTO STABLE REQUIREMENTS. THESE NEEDS MUST BE BALANCED AGAINST THE GOVERNMENT'S NEED FOR OBJECTIVE DELIBERATION IN OUR DECISION PROCESSES, WITHOUT EXCESSIVE INTERFERENCE OR INFLUENCE BY THOSE WITH VESTED INTERESTS OR PREMATURE DISCLOSURE OF UNSTABLE PLANNING.

- GOVERNMENT CLEARLY WANTS TO PROVIDE THE SAME INFORMATION TO ALL POTENTIAL CONTRACTORS AT THE SAME TIME. HOWEVER, THIS GOAL MUST BE TEMPERED BY THE IMPOSSIBLE BURDEN OF TRACKING EVERY TECHNICAL OR USER INTERACTION THAT MAY BEAR ON SOME FUTURE ACQUISITION.

WE CAN AND WILL CONTINUE TO EXAMINE POLICIES AND PROCEDURES THAT APPLY TO THIS EARLY SEGMENT. IN MY VIEW, WE SHOULD LOOK FOR OPPORTUNITIES TO INCREASE OPENNESS AND MAKE THE MAXIMUM INFORMATION AVAILABLE TO THOSE WITH APPROPRIATE CLEARANCES, THE NEED TO KNOW, AND THE DESIRE TO PARTICIPATE.

THE SECOND SEGMENT I'D LIKE TO DISCUSS BEGINS WITH THE FORMULATION OF ACQUISITION STRATEGIES AND PLANS AND THE PREPARATION OF DRAFT SOLICITATION DOCUMENTS. I BELIEVE THAT THIS PART OF THE PROCESS IS COVERED ADEQUATELY BY A COMBINATION OF GOVERNMENT-WIDE, DOD-WIDE, AND AIR FORCE POLICIES AND PROCEDURES THAT CONTROL THE MARKING AND RELEASE OF DOCUMENTS. THESE POLICIES ALSO RESTRICT GOVERNMENT PERSONNEL FROM PROVIDING ADVANCE OR SENSITIVE INFORMATION TO POTENTIAL CONTRACTORS OR THEIR RERRESENTATIVES.

IN THIS SEGMENT OF THE PROCESS, WE ALSO MUST STRIKE A BALANCE BETWEEN LEGITIMATE, COMPETING NEEDS. LET ME CITE THREE EXAMPLES.

- INDUSTRY NATURALLY DESIRES TO KNOW THE GOVERNMENT'S ACQUISITION STRATEGIES AND PLANS, BOTH TO PREPARE TO RESPOND TO THEM AND TO INFLUENCE THEM BY SUBSTANTIVE DISCUSSION. HOWEVER, IN CRAFTING OPTIMUM ACQUISITION STRATEGIES AND PLANS, THE GOVERNMENT MUST HAVE THE OPEN, CANDID, AND CONFIDENTIAL ADVICE OF ITS BEST EXPERTS. THEY MUST BE FREE TO DISCUSS AND DOCUMENT ALL POSSIBILITIES AND USE INFORMATION THAT SHOULD NOT BE RELEASED TO INDUSTRY.

- INDUSTRY DESIRES EARLY DRAFTS OF DOCUMENTS THEY WILL EVENTUALLY RECEIVE. BUT THE GOVERNMENT NEEDS TO AVOID PREMATURE AND CONFUSING PUBLIC DISCLOSURE OF EARLY DRAFT DOCUMENTS THAT HAVE NOT YET BEEN REVIEWED AND APPROVED BY RESPONSIBLE DECISION MAKERS.

- INDUSTRY PERCEIVES THAT THEY COULD AND WOULD BE MORE RESPONSIVE IF THEY WATCHED OUR PLANS DEVELOP. MANY IN GOVERNMENT BELIEVE THAT THEY WOULD USE THIS KNOWLEDGE, NOT TO RESPOND, BUT TO ATTEMPT TO THWART OR CHANGE THOSE PLANS.

I BELIEVE THAT INFORMATION RESTRICTIONS IN THIS PART OF THE PROCESS ARE GENERALLY SOUND AND WELL UNDERSTOOD. IN THE AIR FORCE, WE ARE PROVIDING SUBSTANTIAL INFORMATION TO INDUSTRY THROUGH BRIEFINGS AND TECHNICAL LIBRARIES AND BY PROVIDING DRAFT DOCUMENTS THAT CONVEY A CONSENSUS AT A REASONABLE MANAGEMENT LEVEL. HOWEVER, I BELIEVE WE MUST CONTINUE TO EXAMINE OUR DOCUMENT MARKINGS AND RESTRICTIONS WITH A VIEW TO REDUCING THE VALUE OF, AND MARKET FOR, "INSIDER INFORMATION" BY MAKING ALL VALID AND NECESSARY INFORMATION WIDELY AVAILABLE AS EARLY AS POSSIBLE. NO MATTER HOW WELL THIS IS DONE, THERE WILL BE A FEW WHO SEEK EARLY ADVANTAGE, EVEN IF THERE IS ALREADY A CLEAR, MEASURABLE EVENT FOR RELEASE TO ALL.

THE THIRD SEGMENT EXTENDS FROM ESTABLISHING AND APPOINTING A FORMAL SOURCE SELECTION ORGANIZATION THROUGH CONTRACT AWARD AND ANNOUNCEMENT. OUR REVIEW OF AIR FORCE POLICIES AND PROCEDURES, WITHIN THE CONTEXT OF THE FEDERAL ACQUISITION REGULATION, THE DEFENSE SUPPLEMENT TO IT, AND OTHER DOD DIRECTIVES CAUSES US TO CONCLUDE THAT THIS PART OF THE PROCESS IS WELL REGULATED AND TIGHTLY CONTROLLED.

NO SYSTEM CAN PREVENT AN UNETHICAL INDIVIDUAL FROM VIOLATING CLEAR LAWS, RULES, AND CONFIDENTIALITY AGREEMENTS. I BELIEVE, HOWEVER, THAT WHEN VIOLATIONS DURING THIS SEGMENT ARE INVESTIGATED, THE SOURCE IS ALMOST ALWAYS HONEST HUMAN ERROR OR WILLFUL WRONGDOING, NOT THE ABSENCE OF APPROPRIATE GUIDANCE.

THROUGHOUT THIS PART OF THE PROCESS, THERE IS A CLEAR CONSENSUS BETWEEN GOVERNMENT AND INDUSTRY THAT ALL PROPRIETARY INFORMATION MUST BE PROTECTED; THAT GOVERNMENT COMMUNICATIONS WITH, OR EVALUATIONS OF, ONE OFFEROR MUST NOT BE DISCLOSED TO ANOTHER; AND THAT THE GOVERNMENT HAS BOTH THE RIGHT AND THE DUTY TO KEEP ITS EVALUATIONS AND DELIBERATIONS SOLELY WITHIN ITS SOURCE SELECTION ORGANIZATION UP TO CONTRACT AWARD. THERE ARE ALSO LEGITIMATE, COMPETING NEEDS THAT MUST BE BALANCED IN THIS PART OF THE PROCESS.

EXAMPLES ARE:

- INDUSTRY PERCEIVES THAT EVALUATION PLANS AND STANDARDS SHOULD BE DISCLOSED DOWN TO THE LOWEST LEVEL OF DETAIL. HOWEVER, THE GOVERNMENT MUST BE ABLE TO ASSESS THE DISCRIMINATORS AMONG THE VARIOUS EVALUATION FACTORS AND FIND THE REAL DIFFERENCES IN OFFERORS' UNDERSTANDING AND CAPABILITIES. OUR ABILITY TO DO THAT COULD BE OBSCURED BY TALENTED, PROFESSIONAL PROPOSAL WRITERS, WHETHER FROM WITHIN OR OUTSIDE OF THE COMPANY, RESPONDING TO THESE DETAILS AS CHECKLISTS.

- SOME IN INDUSTRY BELIEVE THAT COST REALISM AND AFFORDABILITY WOULD BE ENHANCED IF ALL GOVERNMENT COST ESTIMATES AND FUNDING PROFILES WERE KNOWN TO COMPETITORS. HOWEVER, THE GOVERNMENT'S ABILITY TO EVALUATE OFFERORS' UNDERSTANDING AND COST REALISM COULD BE REDUCED BY THE COMPETITORS' DESIRE TO MEET OR BEAT THE GOVERNMENT'S NUMBER, WHETHER IT'S RIGHT OR NOT.

AS WE CONSIDER VARIOUS PROPOSALS TO CHANGE THIS PART OF THE PROCESS, WE MUST NOT SUBOPTIMIZE TO PREVENT WRONGDOING. WE MUST FOCUS ON OUR REAL PURPOSE -- TO SELECT THE OFFER THAT IS THE BEST VALUE FOR THE GOVERNMENT.

OUR VIEW IN THE AIR FORCE IS THAT POLICIES AND PROCEDURES FOR INFORMATION EXCHANGE AND THE PROTECTION OF INFORMATION SHOULD, TO THE GREATEST EXTENT PRACTICABLE, BE UNIFORM THROUGHOUT THE DEPARTMENT OF DEFENSE. THEREFORE, CURRENT AIR FORCE GUIDANCE RELIES UPON AND IS CONSISTENT WITH THE OSD POLICIES AND PROCEDURES. THIS IS AN AREA WHERE UNIFORMITY ENHANCES TRAINING AND UNDERSTANDING BOTH IN GOVERNMENT AND IN INDUSTRY.

IN JUNE 1988, FORMER SECRETARY CARLUCCI ESTABLISHED A DOD TASK FORCE. A MAJOR RESPONSIBILITY OF THIS TASK FORCE WAS TO REVIEW CURRENT DOD INFORMATION DISCLOSURE POLICIES. ONE OF THE EARLY CONCLUSIONS FROM THIS EFFORT WAS SECRETARY CARLUCCI'S FINDING THAT WE ALREADY HAVE TOO MANY INTERVENTION POINTS, BOTH IN THE BUDGET AND ACQUISITION PROCESSES. WE HAVE TOO MANY POINTS AT WHICH PEOPLE ATTEMPT TO ARGUE VESTED INTERESTS OR REVISIT DECISIONS ALREADY MADE.

THE SECOND PHASE OF THE TASK FORCE EFFORT IS TO ASSESS WHAT CHANGES ARE NECESSARY TO SIMPLIFY, CLARIFY, AND IMPROVE OUR SYSTEM AND POLICIES. THIS EFFORT IS CURRENTLY UNDERWAY. THE AIR FORCE WILL CONTINUE TO WORK WITH THE TASK FORCE ON THESE AND OTHER INITIATIVES.

AN IMPORTANT PRINCIPLE WHICH SHOULD BE FOLLOWED IN REVIEWING AND REVISING OUR POLICIES ON THE RELEASE OF INFORMATION IS THAT THEY SHOULD BE MUTUALLY BENEFICIAL TO BOTH THE GOVERNMENT AND INDUSTRY. AS I HAVE DISCUSSED, WE UNDERSTAND INDUSTRY'S DESIRE TO OBTAIN THE MAXIMUM AMOUNT OF INFORMATION TO BETTER UNDERSTAND THE GOVERNMENT'S REQUIREMENTS. AS I HAVE ALSO STATED, THE GOVERNMENT, AS DOES ANY CUSTOMER, NEEDS TO PRESERVE LEGITIMATE DECISION PROCESSES, FREE OF UNDUE INFLUENCE. THIS NEED INCLUDES THE CONTINUING PROTECTION OF THE FREEDOM OF INFORMATION ACT EXEMPTIONS. INDUSTRY'S SUGGESTION THAT WE CATEGORIZE SPECIFIC RECORDS AS ALWAYS "RELEASABLE" OR "NOT RELEASABLE" CONFLICTS WITH THE NEED TO PROTECT CERTAIN INFORMATION. ON OCCASION, DOCUMENTS WILL CONTAIN PREDECISIONAL, SOURCE SELECTION, OR PROPRIETARY INFORMATION. THEREFORE, WE NEED TO RETAIN THE RIGHT TO EXAMINE AND RELEASE DOCUMENTS ON A CASE-BY-CASE BASIS.

MANY DOCUMENTS ALREADY ARE AVAILABLE TO INDUSTRY IN WHOLE OR IN PART AFTER THEY ARE SCREENED FOR RELEASABILITY. ACQUISITION AND PLANNING INFORMATION IS AVAILABLE THROUGH A NUMBER OF ROUTINE CHANNELS, WHICH PROVIDE "EQUAL ACCESS". I HAVE INCLUDED A REPRESENTATIVE LIST OF AIR FORCE INFORMATION ACTIVITIES AS AN ATTACHMENT TO THIS STATEMENT FOR THE RECORD.

95-941 0 - 89 - 4

YOU ASKED ME TO ADDRESS MONITORING AND ENFORCEMENT PROBLEMS. AIR FORCE REGULATIONS PROVIDE CLEAR GUIDANCE ON INFORMATION PROTECTION. OUR PERSONNEL ARE BRIEFED AND SIGN STATEMENTS CONCERNING CONFLICT OF INTEREST AND CONFIDENTIALITY BEFORE PARTICIPATION IN SOURCE SELECTIONS. ALL PERSONNEL MUST ALSO CERTIFY ANNUALLY THAT THEY HAVE READ AND UNDERSTAND THE STANDARDS OF CONDUCT REGULATION.

WE ARE INCREASING OUR FOCUS ON CONTRACTING FOR THE BEST VALUE BY CONSIDERING QUALITY, RELIABILITY, AND PERFORMANCE, AS WELL AS PRICE, IN A WIDER ARRAY OF MEDIUM AND SMALLER CONTRACTUAL ACTIONS. AS WE DO THIS, WE ARE GOING TO HAVE MORE PEOPLE OUTSIDE THE CONTRACTING OFFICE INVOLVED MORE DEEPLY IN THE CONTRACTING PROCESS, AS TECHNICAL AND COST REALISM EVALUATORS. THIS IMPORTANT EFFORT, COMBINED WITH PERSONNEL TURNOVER AND INCREASING STATUTORY, REGULATORY, AND TECHNICAL COMPLEXITY, WILL REPRESENT A CONTINUING CHALLENGE.

WE MUST TAKE A POSITIVE LEADERSHIP ROLE TO HELP OUR PEOPLE UNDERSTAND NOT ONLY WHAT THE RULES ARE, BUT WHY WE HAVE THEM AND WHY THEY ARE IMPORTANT. WE ARE EMPHASIZING THIS IN OUR CONFERENCES, WORKSHOPS, AND NEWSLETTERS. WE HAVE ALSO RECENTLY PUBLISHED A SIMPLIFIED AIR FORCE SOURCE SELECTION REGULATION FOR LESS-THAN-MAJOR ACQUISITIONS. IT IS SHORTER, EASIER TO READ, AND EMPHASIZES MORE STREAMLINED PROCESSES AND ALTERNATIVE SOURCE SELECTION ORGANIZATIONS.

MONITORING IS THE RESPONSIBILITY OF LOCAL MANAGEMENT AND THE SOURCE SELECTION AUTHORITIES. FOR ENFORCEMENT, THESE AUTHORITIES USE THE APPROPRIATE INVESTIGATIVE AGENCIES. OVER THE YEARS THERE HAVE BEEN INSTANCES IN THE AIR FORCE IN WHICH UNAUTHORIZED DISCLOSURE OF PROCUREMENT OR PLANNING INFORMATION HAS TAKEN PLACE. WE HAVE INVESTIGATED THOSE INSTANCES. WHERE WRONGDOING WAS PROVEN, WE HAVE TAKEN, AND ARE TAKING, APPROPRIATE ACTION, USING THE REMEDIES ALREADY AVAILABLE.

THE CONGRESS HAS RECENTLY ACTED TO SUBSTANTIALLY TIGHTEN ENFORCEMENT AND ADDED CIVIL AND CRIMINAL PENALTIES IN THE AREA OF CONTROL OF SENSITIVE ACQUISITION INFORMATION. DOD IS CURRENTLY WORKING TO IMPLEMENT SECTION 6 OF PUBLIC LAW 100-679, THE OFFICE OF FEDERAL PROCUREMENT POLICY ACT AMENDMENTS OF 1988. THIS SECTION ADDRESSES "PROCUREMENT INTEGRITY" AND MANDATES NEW INFORMATION PROTECTION REQUIREMENTS. THERE ARE MANY ISSUES CONCERNING DEFINITIONS, TIMING, AND SPECIFIC PROCEDURES AND CLAUSES THAT MUST BE RESOLVED IN THE FINAL RULE. ONLY THEN CAN EACH OF US EVALUATE THE RULE'S CONTRIBUTION TO THE SOLUTION OR, HOPEFULLY NOT, THE PROBLEM.

WE EXPECT TO RECEIVE THE PROPOSED FEDERAL ACQUISITION REGULATION RULE FOR IMPLEMENTING THIS ACT SHORTLY, AS THIS STATUTE BECOMES EFFECTIVE MAY 17 OF THIS YEAR. ONCE THE FINAL RULE IS ISSUED, WE SHOULD ALLOW THESE PROCEDURES TO BE IN EFFECT FOR A SUBSTANTIAL PERIOD OF TIME. THEN AND ONLY THEN CAN WE REASSESS ANY NEED FOR FURTHER LEGISLATIVE ACTION.

12

THE HUMAN EQUATION, WHICH MUST INCLUDE SELF GOVERNANCE, WILL REMAIN OUR MOST IMPORTANT FACTOR IN MONITORING AND ENFORCING DISCLOSURE POLICIES. AS MR ROBERT REICH OF HARVARD UNIVERSITY SAID IN A RECENT NEW YORK TIMES ARTICLE, "WHEN THE SPIRIT OF THE LAW IS DISREGARDED, THE LETTER OF THE LAW EXPANDS UNTIL IT CLAIMS ATTENTION." "WHEN THE LAW DEGENERATES INTO CAT-AND-MOUSE GAMES OF DISCOVERING AND CLOSING AMBIGUITIES, IT LOSES ITS MORAL FORCE, WITHOUT WHICH NO SET OF DETAILED PROSCRIPTIONS CAN EVER BE DETAILED ENOUGH." "(THE SOLUTION) LIES IN A SOCIETY THAT FOCUSES ON WHY LAWS ARE ENACTED RATHER THAN HOW THEY ARE PHRASED, AND THUS DEMANDS ADHERENCE TO THE LAW'S PURPOSES AS WELL AS TO ITS LITERAL CONSTRAINTS." MR CHAIRMAN, I BELIEVE THE VAST MAJORITY OF OUR ACQUISITION PERSONNEL DO RESPECT THE SPIRIT, AS WELL AS THE LETTER, OF THE LAW. WE MUST CONTINUE TO RELY HEAVILY ON THEIR PROFESSIONALISM, INTEGRITY, AND DEDICATION TO EXCELLENCE.

MR. CHAIRMAN, THIS CONCLUDES MY STATEMENT. I WILL BE PLEASED TO RESPOND TO ANY QUESTIONS YOU MAY HAVE.

CHANNELS TO OBTAIN AVAILABLE

ACQUISITION OR PLANNING INFORMATION

1. Defense Technical Information Center (DTIC)

   - Distributes scientific and technical documents of DoD-sponsored efforts to qualified users

     -- Current DoD contractors have need-to-know certified by Contracting Officer

     -- Non-current contractors have need-to-know certified by a military service under DoD Potential Contractors Program

- Types of information available: scientific and technical data relating to development, engineering, evaluation, operation, production, research, test, use, and maintenance of munitions and other military supplies and equipment

- Four locations: Alexandria, VA; Bedford, MA; Los Angeles, CA; San Diego, CA

2. Air Force Information for Industry Office

   - Provides DoD planning and requirements documents for industry, universities and nonprofit institutions registered for access to DoD information services (Registration similar to that for DTIC)

   - Types of information available: Statements of Need (SONs), System Operational Requirement Documents (SORDs), "sanitized" Program Element Descriptive Summaries (PEDS), validated Program Management Directives (PMDs), AFSC Research Planning Guide, Manufacturing Technology Program Financial Plan, and Military Space Systems Technology Model

   - Three locations: Alexandria, VA; Pasadena, CA; Wright-Patterson AFB, OH

ATTACHMENT 1

3. Notices of Proposed Contract Actions

   - Synopses of proposed acquisitions, along with a point of contract for further information, are published in the Commerce Business Daily

   - An R&D sources sought synopsis may also be published in the Commerce Business Daily, as a form of market survey

   - Copies of solicitations are publicly displayed at contracting activities

4. Pre-Solicitation or Pre-Proposal Conferences

   - Sponsored by buying activity

   - Provides information on acquisition, technical/quality/cost issues, and proposed contract structure. Also addresses industry concerns on various aspects of acquisition.

5. Draft Requests for Proposal (RFPs)

   - Advance, planning copy of RFP

   - Sent to interested firms for comment from management/ technical/cost/quality perspectives on Government's planned approach

STATEMENT BY

DR. ROBERT B. COSTELLO

UNDER SECRETARY OF DEFENSE FOR ACQUISITION

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT

OF THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

FOR OFFICIAL USE ONLY UNTIL RELEASED BY THE COMMITTEE

THANK YOU VERY MUCH MR. CHAIRMAN. I AM PLEASED TO BE HERE THIS MORNING TO DISCUSS DEPARTMENT OF DEFENSE POLICIES FOR THE DISCLOSURE OF PROCUREMENT AND PLANNING INFORMATION. IN MY TESTIMONY I WILL ADDRESS EACH OF THE QUESTIONS YOU RAISED IN YOUR LETTER INVITING ME TO TESTIFY AND IN CONCLUSION I WILL PROVIDE MY VIEWS AS TO WHAT SHOULD BE THE BASIS OF OUR DISCLOSURE POLICY.

YOU ASKED IF OUR EXISTING RULES AND REGULATIONS GIVE ADEQUATE GUIDANCE TO DOD OFFICIALS AND PRIVATE CONTRACTORS AS TO WHAT TYPES OF INFORMATION MAY AND MAY NOT BE DISCLOSED. OUR PRESENT DISCLOSURE POLICY PROVIDES CLEAR GUIDANCE CONCERNING INFORMATION THAT SHOULD NOT BE RELEASED, ENCOURAGES THE RELEASE OF SOME INFORMATION AND LEAVES STILL OTHER INFORMATION RELEASE DECISIONS TO THE DISCRETION OF THE INDIVIDUALS CONCERNED WITH THE MANAGEMENT OF SPECIFIC PROGRAMS.

FOR EXAMPLE, POLICIES ON THE DISCLOSURE OF PLANNING, PROGRAMMING AND BUDGETING INFORMATION ARE CONTAINED IN DOD INSTRUCTION 7045.7 AND DOD DIRECTIVE 7045.14. THESE

DOCUMENTS CLEARLY STATE THAT THE FIVE YEAR DEFENSE PROGRAM (FYDP) AND DOCUMENTS WHICH REFLECT THE INTERNAL PLANNING ASSUMPTIONS ON WHICH THE FYDP IS BASED, SUCH AS PROGRAM OBJECTIVES MEMORANDA AND PROGRAM DECISION MEMORANDA (PDM) ARE NOT RELEASABLE OUTSIDE THE DEPARTMENT OF DEFENSE. THE BASIS OF THIS POLICY IS THAT THESE DOCUMENTS ARE DOD MANAGEMENT PLANS WHICH REFLECT INTERNAL DELIBERATIONS. IT IS OUR OPINION THAT NO USEFUL PURPOSE WOULD BE SERVED BY PROVIDING THIS INFORMATION TO CONTRACTORS. THESE ARE PLANS AND PLANS ARE SUBJECT TO CHANGE. FURTHERMORE, WE ARE CONCERNED THAT DISCLOSURE OF THIS TYPE OF INFORMATION WOULD RESULT IN DISRUPTION OF OUR WORK BY ADVOCATES OR THOSE OPPOSING THE VARIOUS ALTERNATIVES WE ARE CONSIDERING.

THERE IS MUCH INFORMATION THAT WE DO PROVIDE CONTRACTORS. FOR INSTANCE, PLANNING INFORMATION RELATED TO SPECIFIC PROCUREMENTS SUCH AS DRAFT SPECIFICATIONS, STATEMENTS OF WORK, AND DRAFT SOLICITATIONS ARE FREQUENTLY MADE AVAILABLE TO ALL INTERESTED CONTRACTORS. WE ENCOURAGE THE RELEASE OF THIS INFORMATION BECAUSE WE BELIEVE IT IS IN OUR BEST INTEREST TO

OBTAIN CONTRACTOR VIEWS AS TO HOW THESE DRAFTS COULD BE IMPROVED.

THERE ARE CATEGORIES OF INFORMATION FOR WHICH DOD HAS NOT PUBLISHED SPECIFIC GUIDANCE. DOCUMENTS CONTAINING OPERATIONAL REQUIREMENTS AND FEASIBILITY STUDIES ARE NOT CONTROLLED BY A SPECIFIC DOD POLICY. HOWEVER, THERE IS SUBSTANTIAL GUIDANCE CONCERNING THE RELEASE OF CLASSIFIED INFORMATION (WHICH THESE DOCUMENTS FREQUENTLY CONTAIN), WE ENCOURAGE THE COMPLETE AND TIMELY EXCHANGE OF TECHNICAL INFORMATION WITH DOD CONTRACTORS (DODI 5200.21) AND WE HAVE A LONG STANDING POLICY THAT INFORMATION WILL BE PROVIDED IN A FAIR AND EVEN-HANDED MANNER TO ALL CONTRACTORS WITH A LEGITIMATE INTEREST. MUCH OF THE INFORMATION THAT DEFINES DOD'S REQUIREMENTS ARE GENERATED WITHIN THE MILITARY DEPARTMENTS AND WE LEAVE IT TO THEM TO DETERMINE POLICIES FOR THEIR RELEASE. THE SERVICES ROUTINELY PROVIDE THIS INFORMATION TO INDUSTRY THROUGH BRIEFINGS AND ACCESS TO REFERENCE LIBRARIES. IT IS OUR OPINION THAT THE DECISION TO RELEASE THIS INFORMATION IS APPROPRIATELY LEFT TO THE SERVICES TO BE MADE ON A CASE-BY-CASE BASIS BY THOSE WHO ARE IN THE BEST POSITION TO DETERMINE

IF THE DISCLOSURE IS IN OUR BEST INTEREST AND WILL NOT GIVE PREFERENTIAL TREATMENT TO ANY CONTRACTOR.

WHILE OUR EXISTING GUIDANCE ON INFORMATION DISCLOSURE IS ADEQUATE, I BELIEVE IT CAN BE IMPROVED. OUR POLICIES HAVE EVOLVED OVER MANY YEARS AND THEY ARE CONTAINED IN A VARIETY OF DIRECTIVES, INSTRUCTIONS AND REGULATIONS. AS A RESULT, IT IS NOT POSSIBLE TO REFER TO ONE DOCUMENT AND READ A CLEAR AND COMPREHENSIVE STATEMENT OF OUR POLICIES. I BELIEVE THIS IS A DEFICIENCY THAT MUST BE CORRECTED. I WILL DISCUSSS SOME STEPS WE ARE TAKING IN THIS AREA LATER IN MY TESTIMONY.

YOU ALSO ASKED WHAT PROBLEMS THE DEPARTMENT HAS EXPERIENCED IN MONITORING AND ENFORCING THESE DISCLOSURE RULES AND REGULATIONS. I WILL DEFER TO THE SERVICE ACQUISITION EXECUTIVES TO DISCUSS SPECIFIC INSTANCES OF ENFORCEMENT, BUT THERE ARE INSTANCES WHEN INFORMATION IS RELEASED CONTRARY TO OUR POLICY. OUR POLICY IS CLEAR THAT SUCH SOURCE SELECTION INFORMATION AS PROPOSED PRICES, FINANCIAL DATA AND PROCEDURES FOR PROPOSAL EVALUATION ARE NOT TO BE RELEASED (DOD DIRECTIVE 4105.62).

OPERATION "ILL WIND" HAS SHOWN THAT THIS INFORMATION IS SOMETIMES SOUGHT BY UNSCRUPULOUS CONTRACTORS AND SOMETIMES PROVIDED, FOR A PRICE, BY DISHONEST GOVERNMENT EMPLOYEES. WHEN WE CATCH THEM, WE DO OUR BEST TO ENSURE THEY ARE PROSECUTED THROUGH THE DEPARTMENT OF JUSTICE.

YOU ASKED WHAT MEASURES THE DEPARTMENT IS UNDERTAKING TO CLARIFY EXISTING DISCLOSURE RULES AND REGULATIONS. WE ARE NOW IN THE PROCESS OF EXAMINING OUR EXISTING DISCLOSURE RULES AND REGULATIONS. THE DOD TASK FORCE ON OPERATION ILL WIND HAS PREPARED A COMPENDIUM OF LAWS, REGULATIONS, DIRECTIVES AND INSTRUCTIONS REGARDING THE DISCLOSURE OF DATA IN DOD. WE ALSO ASKED THE MAJOR INDUSTRY ASSOCIATIONS FOR THEIR VIEWS ON NEEDED CHANGES TO OUR DOCUMENT DISCLOSURE POLICIES. WE HAVE RECEIVED EXTENSIVE RESPONSES FROM INDUSTRY; AND CONSIDERING THEIR POSITIONS, WE ARE DETERMINING WHETHER CHANGES TO OUR POLICIES ARE WARRANTED. A WORKING GROUP, CONSISTING OF REPRESENTATIVES OF THE SERVICES, THE DEFENSE LOGISTICS AGENCY AND ACQUISITION AND COMPTROLLER PERSONNEL ON THE DOD STAFF, HAS BEEN REVIEWING OUR DOCUMENT RELEASE

POLICY. I EXPECT, AS A MINIMUM, THAT THIS GROUP WILL PUBLISH A CLEAR AND COMPREHENSIVE STATEMENT OF DOD'S DISCLOSURE POLICIES IN A SINGLE DOCUMENT WHICH WILL BE WIDELY DISTRIBUTED TO BOTH CONTRACTORS AND DOD PERSONNEL BY THE END OF THE YEAR.

YOU ASKED IF DISCLOSURE RULES AND REGULATIONS SHOULD BE MADE MORE UNIFORM FOR THE THREE MILITARY DEPARTMENTS. I BELIEVE THAT THE COMPREHENSIVE STATEMENT OF DOD'S DISCLOSURE POLICY WE INTEND TO PUBLISH WILL SERVE AS THE BASIS FOR A CONSISTENT APPLICATION OF THESE RULES AMONG THE MILITARY DEPARTMENTS. THEY TOO EXPRESS THEIR POLICIES IN A WIDE VARIETY OF DOCUMENTS, BUT WE HAVE NOT IDENTIFIED SIGNIFICANT POLICY DIFFERENCES BETWEEN THE SERVICES CONCERNING INFORMATION DISCLOSURE. ANY INCONSISTENCIES THAT MAY BE IDENTIFIED WILL BE RESOLVED WHEN WE PUBLISH OUR COMPREHENSIVE STATEMENT OF DOD POLICY.

MR. CHAIRMAN, IN CLOSING, I WOULD LIKE TO SAY THAT THE BASIS OF OUR DISCLOSURE POLICY SHOULD BE THAT INFORMATION WILL BE DISCLOSED TO CONTRACTORS WHENEVER IT IS CLEARLY IN THE BEST INTEREST OF THE DEPARTMENT. A RATIONAL DISCLOSURE POLICY WILL NOT BE BLACK AND WHITE

ONLY, BUT MUST ALLOW FOR MANAGEMENT DECISIONS ON A CASE-BY-CASE BASIS. CERTAINLY, THOSE DOCUMENTS WHICH REFLECT INTERNAL BUDGETARY AND PROGRAMMING INFORMATION SHOULD NOT BE RELEASED TO CONTRACTORS, NOR SHOULD SOURCE SELECTION INFORMATION. CONVERSELY, WE ENCOURAGE OUR CONTRACTING ACTIVITIES TO SEEK THE VIEWS OF CONTRACTORS AND STIMULATE THEIR INTEREST IN OUR REQUIREMENTS BY RELEASING DRAFTS OF SPECIFICATIONS, STATEMENTS OF WORK AND SOLICITATIONS FOR REVIEW AND COMMENT. THE DEFENSE INDUSTRY HAS EXPRESSED A DESIRE TO OBTAIN EARLY VERSIONS OF THOSE DOCUMENTS WE GENERATE IN DEFINING OUR MILITARY REQUIREMENTS. CONSIDERABLE INFORMATION ON MILITARY REQUIREMENTS IS ROUTINELY RELEASED TO INDUSTRY. HOWEVER, THE DECISION TO RELEASE DOCUMENTS WHICH STATE OPERATIONAL REQUIREMENTS, THREAT ANALYSIS, SERVICE MASTER PLANS, ETC. MUST BE MADE ON A CASE-BY-CASE BASIS AND CONSIDERABLE DISCRETION MUST BE GIVEN TO THE SERVICES TO DECIDE WHETHER, WHEN, HOW AND TO WHOM TO DISCLOSE THIS INFORMATION. PROGRAM MANAGERS MUST INSURE THIS INFORMATION IS AVAILABLE TO ALL THOSE WITH A LEGITIMATE INTEREST. WE MUST GIVE PROGRAM MANAGERS THE FREEDOM TO DECIDE

THESE ISSUES, WITHIN ESTABLISHED POLICY, WHILE INSISTING THAT DISCLOSURE BE MADE IN A FAIR AND EVEN HANDED MANNER.

IT IS MY OPINION THAT WE CAN IMPROVE OUR POLICIES FOR THE DISCLOSURE OF ACQUISTION INFORMATION SO THEY ARE MORE CLEARLY STATED AND MORE EASILY FOUND. HOWEVER, I CAUTION AGAINST AN APPROACH THAT ADVOCATES ABSOLUTE CONSISTENCY IN THE DISCLOSURE OF INFORMATION. WE NEED TO PROVIDE THE BEST POLICY GUIDANCE POSSIBLE, BUT WE MUST LEAVE MUCH TO THE DISCRETION OF PROGRAM MANAGERS AND OTHER ACQUISITION OFFICIALS, WHO MUST BE RELIED UPON TO USE THEIR GOOD JUDGMENT IN DETERMING THE PROPRIETY OF RELEASING INFORMATION WHERE RELEASE IS NOT REQUIRED BY LAW.

THAT CONCLUDES MY STATEMENT. I WOULD BE GLAD TO ANSWER ANY QUESTIONS YOU MAY HAVE.

THANK YOU.

United States General Accounting Office

GAO Testimony

For Release on
Delivery
Expected at
9:30 a.m. EST
Friday
February 24, 1989

Investigation of Apparent Preferential Treatment of a Potential Contractor by the U.S. Army Strategic Defense Command

Statement of
Robert P. Murphy
Associate General Counsel

Before the
Subcommittee on Oversight of
Government Management
Committee on Governmental
Affairs
United States Senate

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss a matter included in our 1987 investigation of apparent favoritism towards a potential contractor at the U.S. Army Strategic Defense Command. On July 13, 1988, we provided testimony concerning our investigation before the House Subcommittee on Legislation and National Security.

The investigation was coordinated with the U.S. Army Criminal Investigation Command, known as the Army CID, and established apparent preferential treatment in the conduct of a procurement by Lieutenant General John Wall, then Commander of the Strategic Defense Command. Specifically, we discovered that General Wall took actions creating the appearance of preferential treatment for an engineering consulting firm, BDM International, Inc.

In July 1986, General Wall directed that BDM be made the interim contractor for a major new research initiative, pending the award of a permanent contract. The Strategic Defense Command was aware that BDM intended to compete for this new contract. We learned that on December 19, 1986, at General Wall's direction, a meeting was held to plan the acquisition strategy for the

permanent contract. At General Wall's invitation, a senior executive of BDM was present, and was the only contractor at the meeting. This gave BDM information not then available to other potential offerors, giving the appearance of an advantage over others. Individuals at the meeting have stated that they felt the presence of a BDM executive was inappropriate and gave a negative appearance to the meeting.

Our review of this procurement determined that in April 1987, 74 requests for bids were distributed to various potential bidders, but only 1 proposal, BDM's, was submitted. BDM was awarded the 7-year, $108 million contract on September 14, 1987.

As I stated earlier, we jointly investigated the General Wall matter with Army CID. At the conclusion of the Army CID investigation there was a difference of opinion as to whether the information provided at the December 19, 1986, meeting violated Army Regulation 600-50, "Standards of Conduct for Department of the Army Personnel." Two provisions of these standards are relevant. Paragraph 1-4(f) prohibits action "that might result in or reasonably be expected to create the appearance of," among other things, "giving preferential treatment to any person or entity." Paragraph 2-1(g) prohibits the release to a business concern of "any knowledge" Army personnel may have "concerning

proposed acquisitions or purchases." This paragraph states that such information must be released to all potential contractors as nearly simultaneously as possible and through designated agencies to avoid giving one firm an advantage.

The Army CID investigating agent reports that attorneys from the Office of The Army Judge Advocate General and attorneys for Army CID concluded that acquisition information had been provided to one potential contractor in violation of Army Regulation 600-50. According to the same source, a procurement attorney for the Army Material Command concluded that unless it was established that the information provided gave BDM an advantage, there would be no violation of Army Regulation 600-50. As a result of this view, the investigating agent was instructed to reinterview witnesses to determine whether BDM received an advantage from information it received on December 19, 1986. The results of these subsequent interviews were inconclusive. Army CID then concluded that, irrespective of the view of the Army Material Command attorney, actual advantage to a potential contractor is not required for a violation of Army Regulation 600-50. Army CID then recommended that action be taken against General Wall. In May 1988, the Army Vice Chief of Staff issued a written reprimand to General Wall. The following month, General Wall retired from active duty.

In December 1988, partly as a result of the General Wall investigation, the Chief Counsel for the Strategic Defense Command issued detailed guidance regarding the release of information about acquisition plans. This guidance was a result of his belief that potential systemic problems could be avoided by reemphasizing the governing standards of conduct. A copy of this guidance is attached to my written statement.

Mr. Chairman, this concludes my statement. We will be pleased to respond to any questions at this time.

DISPOSITION FORM

For use of this form, see AR 340-15; the proponent agency is TAGO.

REFERENCE OR OFFICE SYMBOL	SUBJECT
CSSD-LC (600-50a)	Contacts with Industry Concerning USASDC Acquisition Plans

TO SEE DISTRIBUTION FROM Legal Office DATE 22 Dec 88 CMT 1
Mr. Hamilton/of/4680

1. Because of recent events, the Congress and DoD are giving renewed emphasis to long-standing restrictions on improper release of advance acquisition information. Army Regulation 600-50, Standards of Conduct for Army Personnel, paragraph 2-1g prohibits DA personnel from unauthorized or improper release of acquisition information.

2. Within USASDC, the following guidance applies:

a. Before work begins on the draft scope of work for the initiation of a Contract Requirements Package (CRP), potential sources may be provided equal access to information about future requirements as follows:

(1) Long range acquisition information or other advance planning information should be formally published in accordance with existing regulations such as FAR 5.404, AFARS 5.391, and AR 70-35.

(2) There is no requirement that technical personnel or others discuss planned acquisitions with potential offerors. However, if discussions are undertaken, they will be done on a basis which assures equal access of all offerors. Discussions by technical personnel or others may include the technical information which allows potential offerors to determine whether the planned requirement is within their firm's capabilities and area of interest so they may prepare to respond to a solicitation. Government personnel have wide latitude in discussing the technical content of proposed solicitations with potential offerors, and items such as background of, and objectives for, the requirement may be covered. In this respect:

(a) Releaseable background information on the technical requirement includes prior contractual history, if known, and technological advances or knowledge gained or developed by the government which could be helpful.

(b) The objectives for the technical requirement, which may be discussed, normally addresses the purpose of the requirement and desired results or products. Discussion of additional details may be appropriate, but in no instance should offerors be given a "solution" or otherwise be given advice on "how" to respond to a future solicitation.

(3) In addition to technical information, releaseable information on program structure, which includes funding ranges, planned solicitation dates, and contract duration, may be offered. This information should have been previously provided to the public in long range estimates or similar publications. The government employee who provides this information should identify the publication which contains the information, or state when and in what publication the information will be available. If the information is not contained in published long range estimates, the information should be made available as early as practicable as provided in paragraph 2a(4) below. Offerors should be cautioned that all programs discussed are in the planning stage and are subject to changes or cancellation. Under no circumstances will information normally retained in the government, such as Independent Cost

CSSD-LC
SUBJECT: Contacts with Industry Concerning USASDC Acquisition Plans

Estimates, source selection plans, acquisition strategies, and other matters dealing with the contracting process as opposed to the technical requirements, be released.

(4) Copies of information provided during any discussions, must, consistent with security restrictions, be made available to all other interested potential sources. When new information is provided during a particular briefing, an information sheet should be prepared by the briefing office which advises potential sources of the new information and how details may be obtained. The sheets should be coordinated with the Contractin and Acquisition Management Office and released to potential sources by cognizant contracting officer.

(5) The use of viewgraphs or other briefing material to standardize th presentations is encouraged. All discussions must comply with applicable security restrictions.

b. Once work begins on the draft scope of work for initiation of the Contract Requirements Package (CRP) process, the development and preparation phase of an acquisition has begun. Further communication will be through the contracting officer. Before the solicitation is released, these communication may include technical meetings as long as they are under the monitorship of th contracting officer. Once the solicitation is issued, the rules contained in the solicitation apply and questions of potential offerors will be answered in the manner requested by the contracting officer. Normally, this is in writing through the contracting officer. Accordingly, during this phase, potential offerors having questions will be directed to the contracting officer for information.

c. Under no circumstances will information normally retained within the government, such as Independent Cost Estimates, source selection plans, the status of evaluations, the content of competing proposals, and other matters dealing with the contracting process be released.

3. Broad Agency Announcements and other special solicitation methods will follow the rules applicable to the solicitation type. Under no circumstances will offerors be promised or otherwise be given reason to believe that they will be provided a contract unless and until selected in accordance with applicable procedures.

ROGER G. DARLEY
Colonel, JAGC
Chief Counsel

DISTRIBUTION:
A (less USAEDH)

TESTIMONY OF
AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA, INC.
CONCERNING
MANAGEMENT OF PROCUREMENT RELATED INFORMATION IN THE DEFENSE
ACQUISITION PROCESS
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

February 24, 1989

Mr. Chairman and Members of the Subcommittee:

I am William A. Anders, Senior Executive Vice President Operations of Textron Inc., and am accompanied by Robert F. Trimble, Vice President Contracts, Martin Marietta Corporation. We are appearing on behalf of the Aerospace Industries Association of America, Inc. (AIA), the trade association representing the nation's major manufacturers of military and civil aircraft, spacecraft, helicopters, and their related components and equipment. AIA appreciates your invitation to testify today on the subject of the management of procurement related information in the DoD acquisition process.

In AIA's view, it is in the best interest of the Government and industry to make available the maximum possible amount of procurement planning and acquisition information. This free flow of information should be available as early in the process as possible so that all contractors have the information on an equal and timely basis. Frequently, information that could have a significant impact on corporate investment decisions is not made available on

a timely basis. This needless waste of private resources drives up costs to the purchasers.

Prudent investments by contractors of their limited resources for planning, research and development should be of as much concern to the Government as to the contractors involved. Wise investment of these resources furthers the technology developments and program efforts which are most likely to be needed by the Government. This, in turn, reduces ultimately the time and cost required for responding to defense threats, and improves the quality of those responses.

Free flow of information from the Government is essential to allowing contractors to invest those resources prudently. Some have argued that planning, outyear FYDP, PPBS and other program information should not be made available until cast in concrete. This, we submit, is an incorrect view. Whatever information is generated, preliminary or mature, can be useful to the contractors involved in their own planning and resource allocation. The weighting and evaluation of the data is the contractor's responsibility.

Your January 26, 1989, invitation to AIA President Don Fuqua requested that we testify as to rules, regulations and general practices regarding specific categories of documents. Your letter of invitation of February 16, 1989, requested that I address the general principles, practices and problems regarding DoD's disclosure of procurement and planning information.

We will present an an overview of the procurement process from the identification of the "threat" through the acquisition of a specific system to meet that "threat" and, following this discussion, will identify four

categories of existing information and the rules and practices currently in effect for those categories. We also make policy recommendations which will provide for a more open exchange of information as well as an identification of information which, if made available to all of industry on a timely basis, will have the effect of improved competition and improved contractor investment decisions.

The issue of exchange of information must also be viewed within the context of the "Procurement Integrity" provisions contained in the Office of Federal Procurement Policy (OFPP) Reauthorization Act, which become effective on May 16, 1989. We, therefore, have highlighted some of our concerns with this new law as well.

OVERVIEW OF THE PROCUREMENT PROCESS

The procurement of weapons, electronics and other sophisticated military systems -- activities through which DoD conceives, studies, researches, develops, produces and supports major weapons systems for the defense effort -- is continuously evolving. The starting point normally is an identification of a threat or need, perhaps by the Joint Chiefs, a Service or a Defense Agency. At an early point in time, the threat or need generally is communicated to representatives of contractors who might have a capability and

interest for responding effectively (and who have appropriate security clearances). Potential responses are formulated, studied, evaluated, researched and developed into a particular system, and then placed into full production. This process normally spans several years.

Logic suggests, and experience confirms, that frank, continuous exchanges of ideas and information between Government personnel and appropriately cleared representatives of all interested contractors, are essential to successfully responding to these threats and needs -- to developing and producing responsive systems which measure well in terms of performance, quality, cost and schedule. This is an iterative process. DoD representatives communicate their objectives, plans and budgetary restraints to contractors with the technologies, capabilities and interest required. The contractors, in turn, determine the extent of their interest and capability for responding, and then provide concepts, suggestions and assistance and invest resources in planning, research and development. This process provides a return flow of information from contractors, which assists the Government in studying, researching and developing requirements to meet the identified need.

We respectfully submit that this cross-fertilization of information is essential to:

1. The Government's stimulation of contractor interest and participation,
2. The Government's identification, selection, development and production of effective responses to the ever changing threats to our national defense,

3. The Government's marshaling of existing and developing technologies to respond to those threats,
4. The Government's planning, estimating and budgeting, and
5. A contractor's management of its resources, understanding of the Government's needs, and responsible participation in the defense effort.

TYPES OF INFORMATION GENERATED

From the regulatory and management perspectives, procurement related information divides logically into certain categories. Three of these may be encountered at any step and in any type of procurement activity:

- o Classified for national security purposes;
- o Scientific and technical; and
- o Contractor proprietary/business confidential.

Three others are essentially process or phase related:

- o Planning, programming and budgeting system (PPBS);
- o Acquisition planning; and
- o Source selection.

During a typical acquisition program, a vast amount of information is generated and shared. The Government and its contractors produce scientific and technical information; reviews and studies; estimates, budgets, cost records and other financial data; plans and schedules; work sheets, memoranda, and records; communications and presentations; reports; drawings,

specifications, solicitations and contracts; and other documents or information. This enormous and ever-changing universe of procurement related information is likely to be initiated, used and shared by a large number of Government and contractor personnel, from the management, program, financial, contract, technical, and other disciplines. Depending on the phase of a program, its nature and organization, and its security classification, the individuals involved may be at numerous working levels and locations of DoD and the contractors.

Some of the information may be classified for national security purposes. Some may not be available to the public -- perhaps because it falls within an exception to the Freedom of Information Act, or because of markings by a contractor as proprietary/business confidential information. However, even though not publicly available, such information should be and is properly exchanged with interested contractors.

The phrase "generally available to the public" is really quite meaningless in this context. We must look at information exchange within the more narrow framework of "made known to the industry."

Under existing regulations, authority and discretion to exchange information with contractors may be centered in one or a few Government persons (for example, be vested in a contracting officer and his/her superiors or delegees, following issuance of a solicitation and until award of the contract involved); or be dealt with in terms of criteria (for example, "need to know" for classified information); or essentially not be addressed at all (for example, during pre-solicitation acquisition planning).

CLASSIFIED; SCIENTIFIC AND TECHNICAL; AND CONTRACTOR PROPRIETARY/BUSINESS CONFIDENTIAL

DoD's Industrial Security Manual, and related regulations, provide a reasonably well-defined and understood system for identifying, marking, handling, disclosing and disposing of information which is classified for national security purposes. These are overriding requirements governing whenever information is classified, regardless or whether the information is scientific/technical, proprietary, PPBS, acquisition planning or source selection information.

The Government generally favors broad and expeditious interchanges of scientific and technical information among DoD components, their contractors and others. However, the dissemination of particular scientific and technical information may be restricted pursuant to appropriate markings. The Trade Secrets Act, 18 U.S.C. 1905, prohibits unauthorized disclosure by Government personnel of confidential proprietary information of a contractor. FAR 5.401 further provides that:

> (a) A high level of business security must be maintained in order to preserve the integrity of the acquisition process. When it is necessary to obtain information from potential contractors and others outside the Government for use in preparing Government estimates, the contracting officers shall ensure that the information is not publicized or discussed with potential contractors.
>
> (b) Contracting officers may make available maximum information to the public, except information:
>
> . . .
>
> 2) Received in confidence from an offeror; . . .

Other FAR provisions prohibit unauthorized releases of a contractor's proprietary or business confidential information during the procurement

process. Proprietary/business confidential information may be provided by a contractor to the Government at any step in a program or process.

Furthermore, the Department already has a categorization and marking procedure that requires a "distribution statement" to be placed on all DoD technical documents:

> A: Approved for public release; distribution is unlimited.
>
> B: Distribution authorized to U. S. Government agencies only [reason] (date of determination). Other requests for this document shall be referred to (. . . controlling DoD office).
>
> C: Distribution authorized to U. S. Government agencies and their contractors [reason] (date of determination). Other requests for this document shall be referred to (. . . controlling DoD office).
>
> D: Distribution authorized by the Department of Defense and DoD contractors only [reason] (date of determination). Other requests shall be referred to (. . . controlling DoD office).
>
> E: Distribution authorized to DoD components only [reason] (date of determination). Other requests shall be referred to (. . . controlling DoD office).
>
> F: Further dissemination only as directed by (. . . controlling DoD office) (date of determination) or higher DoD authority.
>
> X: Distribution authorized to U. S. Government agencies and private individuals or enterprises eligible to obtain export-controlled technical data in accordance with regulations implementing 10 U.S.C. 140c (date of determination). Other requests must be referred to (. . . controlling DoD office). (DoDD 5230.24 Encl. 3).

These, too, may apply broadly -- for example, to proprietary, acquisition planning and source selection information, if scientific or technical in nature.

Trade secrets and confidential information of others are protected generally under commercial law. In this context, "trade secrets" have been defined as:

> . . . any formula, pattern, device or compilation of information used in one's business which provides an opportunity for advantage over competitors who do not know or use it.

"Confidential information" has been defined as:

> . . . information peculiarly known to a proprietor which it would not care to have revealed to others or used in competition with the proprietor.

A new Section 27 has been added to the Office of Federal Procurement Policy (OFPP) Act by Public Law 100-679. It becomes effective on May 16, 1989. Subsections 27(a)(3), (b)(3) and (c) place certain new prohibitions on soliciting and disclosing "proprietary. . . information" during the conduct of a procurement. For this purpose, proprietary information is:

> (A) information contained in a bid or proposal;
>
> (B) cost or pricing data; or
>
> (C) any other information submitted to the Government by a contractor and designated as proprietary, in accordance with law or regulation, by the contractor, the head of the agency or the contracting officer. (Subsection 27(n)(6)).

We read this definition to mean that the new Act adopted and does not change existing legal concepts of what is contractor proprietary/business confidential information, for federal procurement purposes.

10

PPBS DOCUMENTS AND INFORMATION

The PPBS process is continuous. It shapes and directs the defense effort and its planning on an ongoing basis. DoD's PPBS system and documents are addressed in DODI (Department of Defense Instruction) 7045.7. It lists the following "key" PPBS documents:

- Joint Long Range Strategic Appraisal ("JLRSA")
- Joint Strategic Planning Document ("JSPD")
- Defense Guidance ("DG")
- Program Objective Memoranda ("POMs")
- Joint Program Assessment Memorandum ("JPAM")
- Issue Books ("IBs")
- Program Decision Memoranda ("PDMs")
- Budget Estimates
- Program Budget Decisions ("PBDs")
- President's Budget

The Five-Year Defense Program (FYDP) is not listed in the DODI as a PPBS document. However, FYDPs are central in the DODI's discussion of PPBS. Moreover, they may reflect particular information and decisions associated with the latter. FYDPs provide data concerning the current year, budget year and out years.

FYDP and PPBS information may be classified. If so, it has to be handled in accordance with national security requirements.

11

More generally, DODI 7045.7 (Paragraph E) furnishes the following information/instructions for the release of FYDP data:

> As a result of congressional request, a special annual publication of the FYDP, containing the prior, current and budget years, and a procurement annex containing the prior, current budget and four outyears, have been developed and provided to various congressional oversight committee staffs and the Congressional Budget Office (CBO).. Since the FYDP outyear programs reflect internal planning assumptions, FYDP data beyond the budget year shall not be released outside the Executive Branch of the Government without the expressed written consent of the Assistant Secretary of Defense (Comptroller).

There are no express instructions or restraints in the DODI concerning (i) release of PPBS documents or information from a PPBS source, (ii) release of current and budget year FYDP data, or (iii) release of the FYDP data provided to the Congress.

A large number of organizations within DoD are involved in the PPBS process. Hence, documents are widely distributed and are available at many locations. Contractors' access to information contained in these documents is dependent largely upon the judgment of individual DoD representatives who are responsible for controlling access to the documents.

For example, DoD Directive 3200.12 requires DoD agencies to provide the Defense Technical Information Center (DTIC) with technical reports and in-progress work unit information summaries for all DoD funded research and technology tasks. Repeated audits by the Inspector General have proven that the regulations in DoD 3200.12 are not being enforced (see Attachment 1). Also, DoD agencies formerly were required to prepare R&D Planning Summaries (DD Forms 1634) which tied R&D tasks to the FYDP and included schedule and outyear funding projections. This requirement was eliminated in 1981 under

the Paperwork Reduction Act. The plan was "to replace the 1634 data base with a new data base consisting of the Congressional Descriptive Summaries merged with the fiscal data from the current Five-Year Defense Plan" (see Attachment 2). The fiscal data has not been made available.

While we recognize that the budget planners within DoD and the Administration must be free to change priorities without interference, the issue for industry is one of prudent planning and investment. Timely information about our customer's long-range plans enables industry to adapt to changing circumstances in cost effective ways.

The frank and open exchange of Government strategic planning information would ensure that the iterative process required to transform the statement of national security requirements into operational defense systems makes the best use of DoD and industry resources.

In AIA's view, the specific types of strategic planning information, unique to DoD, which should be released include:

1. Program Objective Memoranda (POMs)

   The POMs set out the individual services' plans to meet the objectives set out in the Secretary's Defense Guidance document. Information contained in the POMs provides valuable guidance to contractors in planning research and development and making investments in conformance with the requirements of their military customer. POM information relevant to specific major procurements should be available to the relevant contractor community.

2. Five-Year Defense Plans (FYDPs)

The outyear funding projections, whose release is restricted, contain information valuable to corporate long-range planners.

3. Program Element Descriptive Summaries (PEDs)

Program elements are the basic building blocks of the Five-Year Defense Plan. They identify the military mission to be undertaken and the organizational entities, forces, materials, services and costs required.

4. Budget Estimate Submissions (BESs)

The budget estimates are submitted by the Services to the Office of the Secretary of Defense to assist the Secretary in preparing the defense budget for submission to the President, and ultimately, to Congress. They contain information on the Services' estimates of the cost of proposed programs and planned buys for the budget year cycle. This information would assist corporate planners in their efforts to match corporate resources with anticipated governmental requirements.

ACQUISITION PLANNING INFORMATION

"Acquisition planning" is a generic and, therefore, imprecise term. It embraces both long term and immediate processes. At the macro level, the Defense Acquisition Board (DAB) and other activities generate information which might be relevant to a particular program, such as:

- Technology and Force Roadmaps
- Mission-Need Statements
- Required Operational Capability Reports

- o Mission Area Analyses
- o Milestone and Program Review Reports
- o Draft Program Documentation
- o Acquisition Decision Memoranda
- o Program Baselines
- o Acquisition Strategy Reports
- o Affordability Assessments
- o Defense Acquisition Board Reports/Minutes
- o Advisory Board Reports

As a program matures toward specific contract solicitations, program specific acquisition planning is developed.

A recurrent theme of the FAR is that Government representatives are not to provide an "unfair advantage" to one contractor over another. For instance, FAR 3.101-1 requires that "Government business shall be conducted . . . with complete impartiality and with preferential treatment for none." During sealed bidding, FAR 14.211(a) restrains release of acquisition information, "so that one prospective bidder shall not be given unfair advantage over another," and FAR 14.211(b) speaks of not affording an advantage to bidders. For negotiated procurements, FAR 15.402(b) speaks of not providing the advantage of advance knowledge; FAR 15.410(c) prohibits furnishing information during discussions if disclosure would prejudice a prospective offerer or quoter; and FAR 15.413-1(b) limits discussions during negotiations that would provide an unfair advantage to one bidder.

The requirement that no unfair advantage would appear to apply to Government representatives when disclosing acquisition (as well as other types) of information. However, there is no guidance as to when treatment of a contractor is to be viewed as "preferential" -- when an advantage which one contractor might obtain (perhaps because of its technical skills, or its diligence, or its capacity) might be viewed as "unfair."

Under the regulations, there also are some specific restrictions on authority to release particular information. These might be document specific (for example, the restrictions on release of outyear FYDP data) or related to a particular phase of a procurement (for example, from issuance of a solicitation until award). However, for the most part, the regulations are silent on the authority to release acquisition planning information.

Responsibility for determining, within regulatory guidelines, whether, when and how information is to be made available, and who the interested contractors might be, is placed by the regulations upon the Government's representatives. The contractor, in turn, must rely upon the apparent regularity of the Government's process unless circumstances raise reasonable doubt.

In the sealed bidding context, the only types of planning information permitted to be released are presolicitation notices, long-range acquisition estimates, and/or synopses (FAR 14.211).

For negotiated procurements, the rules are neither precise nor restrictive. Indeed, FAR 5.404 encourages release of long-range acquisition estimates to potential contractors, on a wide and equally available basis.

FAR 7.102 calls for the Government to conduct "market surveys" in order to promote competition, thus anticipating interchanges with competitors. (FAR Subpart 7.3 calls for secrecy of the Government's estimated cost of performance in relation to a commercial activity which is undergoing a "contracting-out" evaluation under the OMB Circular A-76 process, but there is no counterpart restriction for other procurements.)

"Identical information" is to be provided to prospective contractors, without giving any one competitor the advantage of advance knowledge (FAR 15.402(b)). In a sole source procurement, this restriction has no particular relevancy.

AIA is convinced that competition can be stimulated by a free flow of acquisition/procurement planning information. The availability of such data would generate greater interest among a larger number of contractors, thereby increasing participation in defense procurements. The early dissemination of such information will decrease the likelihood of delays during formal competition as contractors will be better able to provide valid responses.

These documents include:

1. Draft Acquisition Plans
2. Draft Specifications and Requests for Proposals
3. Proposal Evaluation Criteria

A considerable amount of this information is already released routinely to industry. The greater the scope of information provided, the better the contractor's understanding of requirements and the more responsive the proposals submitted to meet Government needs. More complete disclosure of

evaluation criteria will ensure that contractors truly understand the key program issues.

SOURCE SELECTION INFORMATION

"Source selection" also is a generic, and therefore imprecise, term. In one example, the U. S. Air Force requires that "source selection records should be protected and marked 'For Official Use Only' or with appropriate higher classification markings. In addition, items with an * (asterisk) should be marked source selection sensitive." The following are included among the items marked with an asterisk:

- o identities of the source selection authority and/or source-selection board members (unless published);
- o source selection screening criteria and results;
- o the source selection plan;
- o the source selection approval document;
- o meeting notices and records;
- o source selection evaluations and analyses; and
- o any other information related to the procurement, marked pursuant to law or regulation as classified, source selection sensitive, or "For Official Use Only" and which has not been distributed generally to prospective contractors.

We note that the documents which might be marked "For Official Use Only" (a term which clearly permits disclosure to the contractor and the government) include:

- o program management directives and business strategy panel presentations; and
- o source selection decision documents.

(AFR 70-15, Ch. 4; AFR 70-30, Attachment 10.)

For sealed bidding, the FAR limits information which may be released outside the Government before the solicitation, to presolicitation notices, long-range acquisition estimates, and synopses (FAR 14.211(a)). After the solicitation is issued, communications concerning the competition may occur only through the contracting officer, superiors having contractual authority, or others specifically authorized (FAR 14.211(b)).

For negotiated procurements, the rules are not precise and not restrictive during the presolicitation processes. However, after issuance of a solicitation, "only the contracting officer, superiors with contracting authority and specifically authorized others shall transmit technical or other information and conduct discussions with prospective contractors" (FAR 15.413-1). During formal source selection for the negotiated procurement, information dissemination must be authorized by the source selection authority (FAR 15.612(e)), who generally is someone other than the contracting officer (FAR 15.601, 15.612).

The regulatory system further reflects concern for maintaining the integrity of source selection. Thus, DoD Directive 4105.62 addresses release of source selection information during major defense system acquisitions. It asserts a need to handle such information "with the utmost discretion to avoid any compromise" (E(2)). The Directive states that it generally would not be

prudent to disclose source selection team membership before award (E(3)(a)), and requires that "source selection information" in the source selection plan, such as detailed evaluation criteria and proposal evaluation procedures, be protected from unauthorized disclosure (E(3)(a)). As previously noted, the USAF regulations expressly identify certain categories of information to be marked and appropriately safeguarded.

However, even these Air Force rules do not and could not identify all of the categories of information which must be protected on any specific procurement. Furthermore, there is no uniformity within DoD and the civilian agencies on the categories of information to be marked and protected.

Additionally, subsections 27(a)(3), (b)(3) and (c) of the new procurement integrity provision in the OFPP Act will impose certain prohibitions on soliciting and disclosing ". . . source selection information" during the conduct of a procurement. Subsection 27(n)(7) defines "source selection information" to be information which is determined by the head of the agency or the contracting officer to be information both

> (A) the disclosure of which to a competing contractor would jeopardize the integrity or successful completion of the procurement concerned; and
>
> (B) which is required by statute, regulation, or order to be secured in a source selection file or other restricted facility to prevent such disclosure; . . .

In view of these many ambiguities and inconsistencies in the definition and marking of source selection information among the several Services and Agencies, as well as within the types of procurements (that is, sealed bid and

negotiated), it is imperative that source selection information be clearly, distinctly and uniformly marked. The burden of placing the markings has to be the responsibility of the Government since it generates the information. Similarly, proprietary/business confidential information, which can only be generated by a contractor, must also be clearly, distinctly and uniformly marked by the contractor. This system will permit all parties to readily recognize information which must be limited in release.

This approach has been validated within the classified information realm. Security classification guides are generated to define the information which is classified, clear and uniform marking is mandatory, and rules specifically define the procedures which must be used in the handling and release of classified material. It is not an unreasonable administrative burden to require markings, within regulatory definitions and delineations, which identify information which must be protected. Severe criminal and civil sanctions and penalties may be applicable to unauthorized disclosure of such information. Clear notice, in the form of adoption of uniform marking systems for the identification and protection of such information, is essential. However, we caution that, while marking every Government document as "source selection sensitive" may clarify everyone's obligations, over marking will not improve the acquisition process.

Maximum competition in the Government marketplace requires maximum contractor confidence in the acquisition system. Such confidence is predicated on an exchange of information that should be shared, and protection of data that should not be shared.

We recommend that information be analyzed carefully to determine that a significant purpose is being served by withholding. In addition, the development of safeguards for procurement sensitive information should not create new categories for protection of commercial information which extend beyond the protections existing under the Freedom of Information Act (FOIA).

AIA also recommends that the following selected categories of source selection information should be made available to all competitors, upon request:

1. Government Pricing Information

The Government should provide the results of its cost studies (cost models, should cost, life cycle, and design to cost), on or before the issuance of the RFP. Although there may be procurements where low price is the primary criterion for award, this method should be confined to purchase of items with clearly defined specifications. However, in most procurements for services and/or systems where there may be some doubt concerning cost, cost realism should be given more weight than low price. If the budget and expected price were known to all, cost realism could be a major factor. This would also help prevent buy-ins and unrealistically low offers.

2. Competitor Identity

Identities of bidders should be released at the earliest appropriate stage of the source selection process. No benefit can accrue the Government by withholding this information. Contractors can make better teaming decisions based on who is interested and available as potential team members. This, in turn, can reduce costs to the customer.

3. Evaluation Criteria

Accurate evaluation criteria should be made available to competitors on or before issuance of RFPs. The current proposal process can generate less than adequate initial submittals, as well as numerous deficiency notices and clarification requests. On or before issuance of the RFP, preferably at the bidders' conference, the customer should release his specific technical, schedule and administrative concerns. He should identify those he considers to be special risks and how he plans to score industry's proposed plan to manage them. While FAR 15.605(e) provides that the customer need only disclose the relative importance of evaluation factors, the customer should decide upon and release the numerical weightings, assessment criteria, known discriminators, and objective standards employed in the evaluation of proposals.

The actual evaluations subjectively made by the evaluation team should not be disclosed until after award. The Government should also release clear and consistent direction concerning pre and post-solicitations marketing activities, i.e., number/duration of visits, briefings, and meetings. The purpose is not to place an undue burden on the agency and should be limited to pertinent data only.

4. Customer Identity and Background

The Government should release the names of its key personnel in the source selection process, and identify the members of the Source Selection Advisory Council, Source Selection Evaluation Board, and the Source Selection Authority. AIA believes this information would enhance the

integrity of the procurement process and enhance contractors' awareness of DoD personnel involved in specific procurements.

CONCERNS ON IMPLEMENTATION OF THE PROCUREMENT INTEGRITY PROVISIONS

The Council of Defense and Space Industry Associations (CODSIA) has expressed its concerns with the implementation of Section 6 of the OFPP Act in a letter to and meetings with Government officials (a copy of the CODSIA letter is attached). CODSIA has identified a number of significant issues that must be addressed in order to develop an adequate and workable implementation of Section 6. Several of these are directly pertinent to the subject of today's hearing.

Our industry is very concerned about the statute and the regulations because:

- They must provide clear and precise guidance and definitions;
- They must not be applied retroactively so as to have the effect of making improper actions that were proper when they occurred;
- They must not reduce the amount and types of information available in the competitive process; and
- They must be applied uniformly and consistently throughout the Executive Branch.

Section 6 requires both Government contracting officers and competing contractors to certify, prior to award of a contract, that they have not received or inappropriately disclosed proprietary or source selection

information. Penalties include civil and criminal liability, suspension or debarment, and administrative sanctions.

Our industry is urging a workable, uniform implementation of the statute. The regulations must meet the criteria set forth above, otherwise no contracts will be able to be awarded for whatever period of time it takes to straighten things out.

For instance, the law requires certifications to cover the "conduct of the procurement" with respect to awards or modifications occurring on or after May 16. If, in a particular procurement, this period is to commence prior to issuance of a solicitation, it is incumbent upon the Government to identify the beginning date and to notify the competing contractors of that date.

Further, there is currently no definition of what constitutes source selection information in the FAR or any uniformly understood definition of what categories of information are included under the umbrella of source selection information. We believe that it is critical to the efficient working of procurement integrity standards that there be a single, uniform definition of source selection in the FAR and that this definition should be used by all Government agencies without revision or supplementation.

AIA believes that contractors should be given a basis for relying on the regularity of actions of Government personnel in disseminating information. Since only the agency can reasonably know what category of Government documents should be treated as "source selection information" for the purposes of a particular procurement, and only a contractor can know what information is "proprietary" information, clear markings of these categories of documents

by the authors would provide clear notice to all competing contractors and procurement officials.

We recommend the adoption of a specific legend to be applied to all source selection information. As a key element to stabilizing the process of disclosing sensitive information, the Government should adopt a standard legend to be applied to all source selection information. It would be beneficial if this legend would provide for inserting an identifier, such as a solicitation/contract number, so that it would be clear that information received is source selection information for a particular procurement. (Such specific legends are used in the Data Rights Regulations, for example.) AIA further recommends the adoption of a specific legend to be applied to all proprietary information, to avoid confusion and protect contractor and government employees alike.

CONCLUSION

Mr. Chairman, the strategy of the United States in our defense effort is to win our objectives with quality in weapons. That quality requires a long-term commitment to research and development. In order to meet this commitment, the defense industry must engage in long-term planning. In this manner, the mission can be accomplished more efficiently and economically and with wiser use of our tax dollars.

To achieve this, the timely flow of essential strategic and acquisition planning information between the Defense Department and industry is critical. DoD and the contracting industry should share the maximum amount of

information possible for the benefit of our national defense effort. DoD, in fulfilling its mission, can only be as good as its industrial supplier base.

We should begin with a basic presumption that information should be available to contractors unless otherwise specifically restricted or prohibited. Industry needs access to planning information to fulfill its role. The only information that clearly should not be released is information that is company proprietary or source selection sensitive. We find from experience that the current rules governing disclosure are unclear, conflicting, and often poorly implemented.

We believe that a new effort undertaken by government and industry to clarify the standards is essential to better quality in our defense product. This will become even more critical in the coming months as government and industry address compliance with the procurement integrity provision of the OFPP Reauthorization Act. This hearing today is an important step in that direction and we appreciate the opportunity to appear before you to assist in that search.

I will now be glad to answer any questions you might have.

ATTACHMENT 1

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

DEC 23 1988

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION

SUBJECT: Utilization of the Defense Technical Information Center Technical Document Data Base

This is to provide you information concerning a continuing problem in the ineffective use of the Defense Technical Information Center (DTIC). The problem has been addressed in several of our audit and inspection reports issued since November 1983. Despite repeated recommendations to the Director, Defense Research and Engineering (DDR&E) or his predecessors to fix the problem, however, it is clear that we are no closer to a solution than we were in 1983.

The DTIC operates under the operational control of the Director, Defense Logistics Agency (DLA), and in accordance with policy guidance from the DDR&E. Its principal function is to provide centralized DoD services for the acquisition, storage, retrieval, and dissemination of scientific and technical information (STI) to support DoD research, development, and engineering and studies programs. To do that, the DTIC maintains centralized data bases of both technical reports and in-progress work unit information summaries. The basic purpose of those data bases is to provide for the expedient exchange of STI to prevent unnecessary duplication of research effort.

The DTIC data bases are not being effectively used because DoD research activities are neither querying the data base before starting research effort nor submitting technical inputs (work summaries and completed reports) to DTIC for inclusion in the data bases. Both of those practices are required by the governing DoD regulation, DoD Directive 3200.12. The requirements, however, are not being enforced. As a result, there is a strong probability of unnecessary duplication in DoD research effort (both contract and in-house).

The condition was brought to the attention of the then USD(R&E) by the previous Inspector General, in a September 16, 1985 memorandum. That memorandum pointed out that the problem had been identified in a November 1983 audit of in-house research, in a July 1985 inspection of DTIC, and in a draft audit report (subsequently published in September 1985) on contract research. The memorandum called for a vigorous plan of action to address the problem, proposed several options, and then stated, "If none of the above measures is feasible and effective, and no suitable alternative exists, the value of our investment in DTIC needs to be reconsidered."

The USD(R&E) response (November 26, 1985) agreed that the problem required corrective action and provided a list of specific actions that would be taken. Despite that commitment, and repeated attempts by my office to focus management attention on the matter through the followup process, most of the actions have still not been implemented. Moreover, recent responses by ODUSD(R&E) to our followup inquiries indicated that it was backing off its commitment to implement some of the key agreed-upon actions. The ODUSD(R&E) nevertheless assured us that action was being taken in consonance with the DoD position on our reports, that management interest remained high, and that many of the planned improvements, while not yet formally incorporated in DoD regulations, were already set in place by the Services in anticipation of the requirements.

Because of the "mixed-signals," my staff performed a quick-reaction followup inspection of DTIC last summer to determine if DTIC records indicated any improvement in the situation. The followup inspection revealed that the condition remains unchanged, and that the effectiveness of DTIC is hampered by the continued resistance of DoD research activities to use DTIC as required. The draft inspection report made recommendations aimed at expediting and strengthening corrective actions. The DD(R&E) response to the draft report agreed that input to and use of DTIC "is at a less than desirable level," but nonconcurred with the recommendations. The DD(R&E) attributed the problem to inadequate funding provided by the Congress and to limited use of electronic media in DTIC operations. The DD(R&E) proposes to address the problem by establishing a task force to develop an investment strategy for scientific and technical information programs that more adequately meets user needs.

In my view, the DD(R&E) posture is unacceptable because it represents continued delay in solving a problem that has already been tolerated too long. The problem is noncompliance with stated DoD policy. If such noncompliance were excusable because of problems in DTIC operations, that issue should have been surfaced and addressed several years ago. It was not. We have no assurance that the task force solution will be pursued any more vigorously than the previous promised actions were. Further, as the DD(R&E) response clearly indicated, historically neither the DoD nor the Congress has demonstrated a willingness to provide the resources to solve the problem through DTIC modernization.

My position is that we should either (1) take aggressive action to enforce compliance with DoD requirements in the current situation (even as we work on long-term fixes); or (2) eliminate the requirements and disestablish DTIC. Option 1 would convey a clear message to the DoD research community that top DoD management is serious about the issue and will brook no

continued recalcitrance on compliance. (The "business as usual" approach that has thus far been followed conveys the opposite message.) I recognize that, under Option 2, certain ancillary functions of DTIC may need to continue to be performed by a cadre staff assigned to some organizational element. (The DTIC also provides support services to assist the ODUSD(R&E) in executing the STI program.) A major portion of the funds in the DTIC operating budget, however, would become available to solve other budget problems. The DTIC operating budget is approximately $22 million for fiscal year 1989.

Our final inspection report on the matter will be issued shortly. I urge that you review it and ensure the fullest consideration of how the DoD might either make the potentially very beneficial DTIC concept work or end the presently flawed program.

June Gibbs Brown
Inspector General

cc: Deputy Secretary of Defense
Director, Defense Logistics Agency

ATTACHMENT 2

OFFICE OF THE UNDER SECRETARY OF DEFENSE

WASHINGTON D.C. 20301

RESEARCH AND ENGINEERING

8 AUG 1981

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (RESEARCH, DEVELOPMENT, AND ACQUISITION)
ASSISTANT SECRETARY OF THE NAVY (RESEARCH, ENGINEERING, AND SYSTEMS)
ASSISTANT SECRETARY OF THE AIR FORCE (RESEARCH, DEVELOPMENT, AND LOGISTICS)
DIRECTOR, DEFENSE ADVANCED RESEARCH PROJECTS AGENCY
DIRECTOR, DEFENSE COMMUNICATIONS AGENCY
DIRECTOR, DEFENSE INTELLIGENCE AGENCY
DIRECTOR, DEFENSE LOGISTICS AGENCY
DIRECTOR, DEFENSE MAPPING AGENCY
DIRECTOR, DEFENSE NATIONAL SECURITY AGENCY
DIRECTOR, DEFENSE NUCLEAR AGENCY

SUBJECT: Defense R&D Planning Summaries (DD Forms 1634)

We are examining various requirements placed upon the Services and Defense Agencies for the preparation of data and reports. That review has shown a substantial overlap between the R&D Planning Summaries (DD Forms 1634) provided the Defense Technical Information Center and the Congressional Descriptive Summaries furnished annually to Congress.

I propose to replace the 1634 data base with a new data base consisting of the Congressional Descriptive Summaries merged with the appropriate fiscal data from the current Five Year Defense Plan. This would eliminate one reporting requirement and still provide an authoritative planning data set.

Please provide comments and reactions to this approach by 15 September 1981. My point of contact is Dr. Jim Suttle, telephone 697-6506.

Your support and efforts to maintain the current R&D Planning Data Base are greatly appreciated, and that data base will continue to be maintained until a suitable replacement is assured.

George P. Millburn
Acting Deputy Under Secretary of
Defense for Research and Engineering
(Research and Advanced Technology)

ATTACHMENT 3

COUNCIL OF DEFENSE AND SPACE INDUSTRY ASSOCIATIONS (CODSIA)

1722 Eye Street, N.W., Suite 300
WASHINGTON, D.C. 20006

(202) 457-8713

CODSIA Case 26-88
January 16, 1989

The Honorable Robert B. Costello
Under Secretary of Defense for
Acquisition
The Pentagon Room 3E933
Washington, D.C. 20301

Mr. Richard H. Hopf
Associate Administrator for
Acquisition Policy
General Services Administration
18th & F Streets Room 4010
Washington, D.C. 20405

Mr. Stuart G. Evans
Assistant Administrator for
Procurement (Code H)
National Aeronautics and
Space Administration
Washington, D.C. 20546

Dr. Allan V. Burman
Acting Administrator
Office of Federal Procurement Policy
Old Executive Office Bldg. #350
Washington, D.C. 20503

Gentlemen:

The undersigned member associations of the Council of Defense and Space Industry Associations (CODSIA) understand that DoD is currently working to meet the 16 May 1989 statutory deadline required by Section VI of the OFPP Authorization Act and as a result has placed a high priority on early resolution of this matter.

While it should be clear from the language of Section VI that it was the intention of the Congress to require a single uniform Government-wide policy, we are concerned that the Department of Defense (DOD), the Office of Federal Procurement Policy (OFPP), and other agencies are taking a fragmented approach in drafting regulations that will govern related aspects of the single issue of how information will be exchanged between government and industry in the competitive process. We consider it essential for compliance and enforcement that there be a single, clear definition of source selection information in the FAR and that this same definition be applied to all agencies without revision or supplementation. Non-uniform regulations across the executive branch could result in multiple certifications and, accordingly, multiple internal controls within a single contractor that must respond to different executive branch agencies.

We also recognize the importance to industry of the requirements which will flow from this statute. Our examination of the issues arising from Section VI, however, raises further concerns. We are concerned that there may be insufficient integration of the policies related to five other major activities which will govern both the types of information which can be exchanged in support of the competitive process and the consequences for companies and individuals in exchanging those types of information. These related activities are:

1) The effort initiated by Assistant Secretary of Defense (Production and Logistics) Jack Katzen to attempt to define and categorize for the first time the various types of information available and delineate firm rules for what should be shared between the government and potential contractors and what should be protected;

2) The statutory mandate for OFPP to develop conflict-of-interest standards for consultants and their private-sector clients;

3) The changes initiated by the Defense Contract Audit Agency (DCAA) to the allowability criteria and required supporting documentation for consultant costs and now issued as a proposed rule changing the Federal Acquisition Regulation (FAR) cost principle 31.205-33, Professional and Consultant Services costs;

4) The DoD-proposed rule (DAR Case 88-146) for a mandatory contractor code of conduct program; and

5) The "Competitive Information Certificate and Profit Reduction Clause" requirement developed by a DoD Task Force and required of selected contractors identified during the "Ill Wind" investigation.

The consequences of the agencies' failure to properly integrate the substance of these regulations could: restrict the flow of necessary information which currently benefits the government acquisition process; make it impossible for both government and industry personnel to differentiate between their proper duties and potentially criminal acts; and increase, rather than decrease, the allegations of abuse within the acquisition process.

In summary, in order to be workable, there must be a single, complete implementation of Section VI fully integrated with the other regulations. Additionally, government policy should result in regulations implementing Section VI which:

(1) Provide a clear, consistent, and uniform definition of source selection information;

(2) Clarify the appropriate exchange of information between the government and its contractors.

(3) Define the requirements for certification, including a "best of knowledge and belief" standard for such certifications.

Attached to this letter is a summary of our principal concerns on Section VI. We also renew our offer made in our 30 November 1988 response to Mr. Katzen to have a multi-association group work with government representatives in addressing the specific implementation of these and related concerns. We have established a CODSIA task group to assist in the development of implementing guidance in advance of the statutory deadline.

Sincerely,

Jean A. Caffiaux
Senior Vice President
Electronic Industries Assn

Don Fuqua
President
Aerospace Industries Assn

Wallace H. Robinson, Jr.
President
National Security Industrial Assn

John J. Stocker
President
Shipbuilders Council of America

Mark Schultz
President
Professional Services Council

Attachment

FAR Council
January 10, 1988
Attachment

PRINCIPAL CONCERNS ON SECTION VI IMPLEMENTATION

A. On November 30, 1988, three of our member associations responded to a request by Assistant Secretary of Defense Katzen regarding the exchange of information between DOD and industry in support of the acquisition process. Our response identified three major categories of information (strategic planning, acquisition/procurement planning, and source selection) and recommended the release of all but source selection information to perfect the government's statement of requirements and maximize competition. Source selection information is narrowly but thoroughly defined in the November 30 letter, and such information should be marked with a unique and clearly recognizable protective marking (to be used on both government and contractor source selection information). Use of the definition of source selection information recommended in the November 30 letter to Assistant Secretary of Defense Katzen will provide a consistent basis for the further implementation of the procurement integrity requirements. Clearly defining source selection information, identifying it with a clear, recognizable protective marking, and proscribing its release outside the government, would establish firm, uniform rules for compliance and enforcement.

B) The language of Section VI is also very clear as to the activities prohibited both contractor employees and government personnel. The prohibitions against disclosure of source selection information to unauthorized persons becomes primarily an internal government matter since this information is solely in the control of government personnel.

However, since a company's proprietary information can be possessed by people in that company as well as by government personnel, the government has an affirmative obligation to identify which of its employees are authorized to receive this proprietary information. Identification may be accomplished in a variety of ways, but must be stated for each procurement so that contractor personnel can avoid disclosures to unauthorized government employees.

C) With regard to certification, we note that there are three requirements in Section VI: one certification by the contractor to the government, one certification by employees who have participated in the preparation of the bid or proposal, and one certification by the government contracting officer. In our view, the certification to the government must be made for each contract or modification over the threshold, but it should not be required of all offerors. Consistent with the statute, certification should be required only from the apparent successful offeror prior to award.

The certification by "employees" also has two parts. Each officer, employee, agent, representative, and consultant who participated in the proposal effort must certify that he or she (1) is familiar with the non-disclosure requirements and (2) will report immediately any information on a violation or possible violation. The frequency of the certification should be left to the discretion of the contractor. Senator Levin has stated, in his Senate floor statement on final passage of the bill, that these certifications "are general certifications which can be made on a one-time basis at the beginning of an individual's employment with the contractor. They are not intended to be made on a contract-by-contract basis for each Federal contract." Thus, in our view, this requirement can be met by a one-time certification of our employees.

Furthermore, the certification to the government should be only to the best of knowledge and belief of the certifying official. As the government knows, it is literally impossible for a person to have knowledge of every action of everyone involved on behalf of his or her company in the preparation of a bid or proposal. No amount or type of investigation could provide the knowledge necessary for an absolute certification. For that reason, other contract certifications have included the best of knowledge and belief standard.

D) Other issues to be addressed include:

(1) Determination that the contractor's certification applies only to the contractor and its "employees."

(2) Establishment of a mechanism for identification of both government and contractor employees who are personally and substantially involved in the conduct of the procurement.

(3) Establishment of a clear definition of "thing of value", particularly as it affects current regulations (see FAR Part 3).

(4) Establishment of a due-process mechanism for contractors accused of a violation.

E) The Section VI implementing contract clause and certification requirement will be in conflict with the Profit Recapture clause and Certification now required of certain DoD contractors. We recommend that, when Section VI is implemented, the latter requirement be deleted.

THE UNDER SECRETARY OF DEFENSE

WASHINGTON, DC 20301

ACQUISITION

6 FEB 1999

Honorable Carl Levin
Chairman, Subcommittee on
Oversight of Government Management
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your letter of December 16 in which you requested information regarding the appropriate scope of disclosure of procurement and planning information to private contractors by the Department of Defense.

Your request is timely in that the Ill-Wind Investigation has caused us to review these policies to ensure that a balanced approach to industry is maintained. As indicated in the enclosed documents, we have initiated a review of this matter. We expect to be able to provide additional information after our review is further along. Until then, enclosed is the information now available in answer to your specific questions.

Sincerely,

Enclosures

SENATOR LEVIN'S QUESTIONS WITH ANSWERS

1. Please list all existing rules and regulations of the Department regarding the disclosure of procurement and planning information to private contractors.

Response: Please refer to the attached draft document "Compendium of Laws, Regulations, Directives and Instructions Regarding the Disclosure of Data in the Department of Defense." This compendium was prepared by the Task Force established in response to the Ill-Wind investigation.

2. Does the Department believe that existing rules and regulations give adequate guidance to Department officials and private contractors and consultants as to what types of information may and may not be disclosed?

Response: While they are adequate, we are conducting a review to determine if they can be improved.

3. Has the Department undertaken any review of its document disclosure policies and practices in light of the "Ill-Wind" investigation? If so, please outline the steps that have been taken and the additional steps that are planned to complete this review.

Response: The Task Force has had this area under review, which was the reason the attached compendium was developed. As an additional effort, we have asked industry to help us review this matter. Before any further discussions with industry, we will categorize the information that is being considered for exchange, identify the benefits that the industry associations believe would be derived from access to each type, and identify any negative impacts to the government that could result from industry access to each type. This will facilitate the identification of what information would be most useful with the least adverse impact and could provide the basis for identifying alternatives.

4. Other than any action that may have been taken in response to the "Ill-Wind" investigation has the Department taken any disciplinary action against Department officials in the last five years because of improper disclosure of procurement or planning information to a private contractor? If so, in how many cases has such action been taken?

Response: We do not have a system to identify these specific cases of improper behavior. However, the Office of the DoD Inspector General knows at least three such cases, as described below. The Military Departments are also reviewing this area and may be able to identify additional cases:

1. An Army officer was reprimanded by the Army in 1988 for improperly releasing procurement information regarding contracts to be awarded.

2. An Army officer is under indictment for providing classified procurement information to a representative of a contractor.

3. Three Air Force officials were fired in 1987 for improperly providing bid information to a representative of a contractor.

The remaining questions regarding specific release policies for the identified documents will be answered by the Military Departments.

Attachments

DRAFT

COMPENDIUM

OF LAWS, REGULATIONS, DIRECTIVES AND INSTRUCTIONS

REGARDING COLLUSIVE BIDDING ON CONTRACTS

INVOLVING THE DEPARTMENT OF DEFENSE

SEPTEMBER 1988

TABLE OF CONTENTS

Introduction 1

STATUTES 1

CRIMINAL 1
CIVIL 3

FEDERAL ACQUISITION REGULATIONS (FAR) 3

DOD SUPPLEMENT TO THE FAR (DFARS) 7

DOD DIRECTIVES (DODD) AND DOD INSTRUCTIONS (DODI) 7

GENERAL ACCOUNTING OFFICE (GAO) DECISIONS 8

COLLUSIVE BIDDING

Collusive bidding on DOD contracts is a federal crime. It is also commonly referred to as "price fixing" or "bid rigging," and can occur whenever:

(1) a bidder has, for the purpose of restricting competition, consulted, communicated, or agreed with other bidders or competitors, regarding:

(i) bid prices,

(ii) whether or not to submit a bid, or,

(iii) the methods or factors used to calculate bids; or,

(2) whenever a bidder, for the purpose of restricting competition, knowingly discloses or intends to disclose, bid prices to any other bidder or competitor before bid opening or contract award; or,

(3) whenever a bidder makes, or intends to make, an inducement to another concern with regard to restricting competition.

Antitrust violations are criminal offenses, and as such, fall under the jurisdiction of the Department of Justice. Contracting agencies, however, are responsible for referring suspected cases to the Attorney General for investigation. If subsequent prosecution is warranted for collusive bidding on a DOD procurement, Government prosecutors can charge the defendant(s) with basically the same battery of criminal antitrust violations as they would in a strictly commercial, private sector case. Additional antitrust legislation is not necessary to prosecute collusive bidding on DOD contracts.

The following compendium of federal statutes, regulations and GAO decisions addresses the revelant rule structure which may be applicable to DOD collusive bidding allegations.

STATUTES

CRIMINAL STATUTES

15 U.S.C. § 1 — Trusts, etc., in Restraint of Trade (The Sherman Antitrust Act, §1)

Makes any unreasonable agreement "in restraint of trade" a felony, punishable by

a fine of up to $1 million per count for corporations and $100,000 per count for individuals and/or imprisonment. This statute applies equally to anti-competitive restraints of trade in relation to both private and public sector contracts.

18 U.S.C. § 286 — Conspiracy to Defraud the Government with Respect to Claims.

Provides for the punishment of anyone who enters into an agreement to defraud the United States by obtaining, or aiding to obtain, the payment of any false, fictitious or fraudulent claim.

18 U.S.C. § 287 — False, Fictitious or Fraudulent Claims.

Provides for the criminal punishment of anyone who makes or presents a claim against the United States, knowing that the claim is false, fictitious or fraudulent.

18 U.S.C. § 371 — Conspiracy to Commit Offense or to Defraud the United States.

Makes it a criminal offense for anyone to conspire with another person to defraud the United States.

18 U.S.C. § 1001 — Statements or Entries Generally.

Makes it a criminal offense for anyone to knowingly and willfully make any false, fictitious, or fraudulent statement or representation. (This provision would apply to a contractor who submits a false Certificate of Independent Price Determination. See FAR 52.202-3 infra.)

18 U.S.C. § 1341 — Frauds and Swindles.

The Mail Fraud statute. Makes it a criminal offense to use the mail in any way in furtherance of any scheme to defraud.

18 U.S.C. § 1343 — Fraud by Wire, Radio, or Television

The Wire Fraud statute. Makes it a criminal offense to transmit by wire, radio, or television in interstate or foreign commerce any information for the purpose of furthering a scheme to defraud.

CIVIL STATUTES

41 U.S.C. § 253b(e); 10 U.S.C § 2305(b) — Evaluation and Award; Antitrust Violations.

Requires an agency head, who suspects that a bid or proposal was submitted in violation of the antitrust laws, to refer the bid or proposal to the Attorney General for appropriate action.

41 U.S.C. § 605(a) — Decision by Contracting Officer (Contract Disputes Act).

An agency head is not authorized to settle, compromise, pay, or otherwise adjust any claim involving fraud.

FEDERAL ACQUISITION REGULATIONS (FAR) PROVISIONS

FAR Part 3 — Improper Business Practices and Personal Conflicts of Interest.

FAR 3.103 — Independent Pricing.

FAR 3.103-1 — Solicitation Provision.

Requires inclusion of a Certificate of Independent Price Determination in solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless: (1) the acquisition is made under small purchase procedures; (2) the work is to be performed by foreign suppliers outside the United States; (3) the

95-941 O - 89 - 6

solicitation is a request for technical proposals under two-step sealed bidding procedures; or, (4) the solicitation is for "set-rate" utility services.

FAR 3.103-2(b) Evaluating the Certification.

Requires rejection of suspected collusive offers, e.g., when an offeror modifies an independent pricing certificate to indicate that the firm disclosed its prices and the contracting officer is unable to determine whether the disclosure was for a legitimate purpose. When an offer is rejected for this reason, the rejection must be reported to the Attorney General.

FAR 3.3 Reports of Suspected Antitrust Violations.

Requires agency personnel to report evidence of suspected federal procurement-related antitrust violations to the Attorney General. The following behavior patterns are frequently associated with antitrust violations and include, but are not limited to, the following:

(1) The existence of an "industry pricelist" to which contractors refer in formulating their offers;

(2) A sudden change from competitive bidding to identical bidding;

(3) Simultaneous price increases or "follow-the-leader" pricing;

(4) Any rotation of bids and proposals in which competitors take sequential turns as low bidder;

(5) Market division by agency, area or product lines, as reflected by certain competitors which consistently have the low bid in the same market;

(6) The establishment of a collusive price estimating system;

(7) The filing of a joint bid by two or more competitors, each of whom is capable of contract performance;

(8) Any appearance of direct collusion, such as identical bids or identical errors, misspellings, and the like in two or more offers;

(9) Assertions by employees, former employees, or competitors of agreements in restraint of trade.

Agency reports to the Attorney General are to include a brief statement describing the suspected practice(s) and the reason(s) for the suspicion.

FAR 9.1 Responsible Prospective Contractors.

FAR 9.103 Policy.

The contracting officer must make an affirmative determination of responsbility before awarding a contract to a prospective contractor.

FAR 9.104 Standards.

Among other responsibility qualification standards, a prospective contractor must have a satisfactory record of integrity and business ethics.

FAR 9.4 Debarment, Suspension, and Ineligibility.

FAR 9.402 Policy.

Provides for debarment and suspension of contractors when the sanction is necessary for the protection of the Government.

FAR 9.405 — Effect of Listing.

Debarred or suspended contractors are excluded from receiving Government contracts unless an agency head determines that there is a compelling reason for soliciting offers from, awarding contracts to, or consenting to subcontracts with these contractors.

FAR 9.406-2 — Causes for Debarment.

Includes violation of federal or state antitrust statutes relating to the submission of offers.

FAR 9.407-2 — Causes for Suspension.

Includes violation of federal or state antitrust statutes relating to the submission of offers.

FAR 33.210 — Contracting Officer's Authority.

The contracting officer's authority to settle claims arising under the Contract Disputes Act does not extend to the settlement, compromise, payment or adjustment of any claim involving fraud.

FAR 52.203-2 — Certificate of Independent Price Determination.

Requires a person, who is responsible for determining prices in the offeror's organization, to certify that the firm's prices have been arrived at independently, without (for the purpose of restricting competition), any consultation, communication, or agreement with any other offeror or competitor relating to: (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered. The offeror must also certify that it has not disclosed the prices in its offering and that no attempt has been made by the offeror to restrict competition by inducing a competitor to submit an offer or not to submit an offer.

DOD SUPPLEMENT TO THE FAR (DFARS) PROVISIONS

DFARS 3.000 — Scope of Part.

Requires departmental reports of suspected criminal conduct, noncompetitive practices, kickbacks, and other procurement irregularities in accordance with the procedures set forth in DFARS 9.472 and applicable agency procedures.

DFARS 3.103-2 — Evaluating the Certification (of Independent Price Determination).

Requires departmental reports to the Attorney General in accordance with DFARS 3.000 when an offer is rejected for deficient certification or because the certification is suspected as being false.

DFARS 3.3 — Reports of Identical Bids and Suspected Antitrust Violations.

Requires reports of suspected antitrust violations in accordance with DFARS 3.000 and departmental procedures.

DFARS 9.472 — Reporting.

Outlines situations in which reports are required, the contents of these reports and the various submission requirements. Reports are required whenever there is a suspected antitrust violation.

DEPARTMENT OF DEFENSE DIRECTIVES (DODD) AND INSTRUCTIONS (DODI)

DODD 7050.1 — Defense Hotline Program (March 20, 1987).

Outlines requirements for DoD Hotline Program regarding the investigation of fraud, waste, and abuse allegations (including false certifications and other illegal acts).

DODD 7050.5 — Coordination of Remedies for Fraud and Corruption Related to Procurement Activities (June 28, 1985).

Provides examples of the adverse impact of fraud on the DoD mission, including the following: endangerment of personnel or property; monetary loss; denigration of program or personnel integrity; compromise of the procurement process; and reduction or loss of mission readiness. DOD policy seeks appropriate relief from fraud or corruption losses and attempts to ensure the integrity of DoD programs and operations.

GENERAL ACCOUNTING OFFICE (GAO) CASES ON COLLUSIVE BIDDING ALLEGATIONS

Defense Logistics Agency, Comp. Gen. B-230095, 88-1 CPD ¶ 273 (1988).	In response to a request for an advance decision, GAO advised that allegations of bid collusion must be resolved by the Department of Justice in the claimant's favor before any payment can be made on a contract claim.
King-Fisher Co., Comp. Gen. B-228316, B-228309, 87-2 CPD	"GAO will not consider an allegation of collusive bidding. Such an allegation is, in the first instance, a matter to be considered by the contracting officer in the context of a responsibility determination. Should collusive bidding be suspected, the matter should be referred to the Department of Justice since it constitutes a criminal offense." Protest dismissed.
Wagster Contracting, Comp. Gen. B-229060, 87-2 CPD ¶ 271 (1987).	The GAO "will not consider an allegation of collusive bidding. An allegation of collusive bidding raises a matter for determination by the contracting officer in the context of responsibility of the bidder. If the contracting officer suspects collusive bidding, he should refer the matter to the Attorney General." Protest dismissed.

Connelly Containers, Inc., Comp. Gen. B-227539, 87-2 CPD ¶ 44 (1987).	Collusive bidding allegations should be referred to the Attorney General. Protest dismissed.
B-K Manufacturing Co., Comp. Gen. B-218832, 85-1 CPD ¶ 650 (1985).	The purpose of the Certificate of Independent pricing is to prevent collusive bidding. Any collusive bidding allegation should be first considered by the contracting officer in the context of a responsibility determination, and referred to the Attorney General. Protest dismissed.

DRAFT

COMPENDIUM

OF LAWS, REGULATIONS, DIRECTIVES AND INSTRUCTIONS

REGARDING SPECIFICATIONS WHICH ALLEGEDLY

FAVOR ONE CONTRACTOR OVER ANOTHER

ON DOD CONTRACTS

SEPTEMBER 1988

DRAFT

TABLE OF CONTENTS

Introduction 1

CRIMINAL STATUTES 2

CIVIL STATUTES 3

OFFICE OF MANAGEMENT AND BUDGET (OMB) CIRCULARS 5

FEDERAL ACQUISITION REGULATIONS (FAR) 5

DOD SUPPLEMENT TO THE FAR (DFARS) 13

FEDERAL INFORMATION RESOURCES MANAGEMENT REGULATION (FIRMR) 14

DOD DIRECTIVES (DODD) AND DOD INSTRUCTIONS (DODI) 15

GENERAL ACCOUNTING OFFICE (GAO) DECISIONS 17

ACTUAL MINIMUM NEEDS 18

ORGANIZATIONAL CONFLICTS OF INTEREST 19

Introduction and General Overview

Solicitation and contract specifications are used to describe and detail the essential requirements for goods and services which the Government intends to procure from potential offerors. Most specifications (excluding hybrids) fall into three categories: functional, performance or design specifications. Any incidental restrictions on full and open competition will vary with the Government's actual minimum needs and the type of specifications used in the procurement.

If the Government's minimum needs are detailed in terms of the desired outcome or end-item requirements, the description is called a functional specification. This permits the contractor to determine the most efficient and economical approach to "meet the specifications," and is generally regarded as the least restrictive type of Government purchase description.

A performance specification is somewhat more restrictive than a functional specification, and provides for increased Government direction over the contractor by detailing required operational characteristics that the offeror's product must meet.

A design specification is even more restrictive than either a functional or performance specification. It is used when the Government must meet its needs in a very specific manner with regard to product measurements, tolerances, materials, etc. When Government design specifications are used, differentiation between contractors is largely a matter of price. A design specification is more suited to product developments which lack follow-on commercial applications, since commercial producers may find it too expensive to modify their commercial line in order to meet the Government's detailed design specifications.

Occasionally, the Government may require special items or equipment which is available, sometimes, from only one supplier. Under these conditions and often under exigient situations, the Government may find it more efficient to describe its needs in terms of an existing, pre-identified, qualifying product. Government purchase descriptions such as these are referred to as "brand name or equal" specifications. Procuring agencies, however, must still identify the salient characteristics of any "brand name or equal" products they require, thereby permitting other offerors to compete equivalent products. FAR 10.004.

The following compendium of federal statutes, regulations and GAO decisions addresses both allowable and prohibited restrictions on Government specifications and lists selected criminal sanctions which could be applicable in particular cases.

CRIMINAL STATUTES

18 U.S.C. § 201	Bribery, Graft and Other Violations of Public Trust. Broad prohibition against bribes and gratuities. This criminal statute would be relevant if a public official made an unauthorized releae of contractor proprietary information in return for "something of value."
18 U.S.C. § 371	Conspiracy to Commit Offense or to Defraud United States. Prohibits any conspiracy to defraud the Federal Government.
18 U.S.C. § 641	Embezzlement and Theft: Public Money or Records. Prohibits the conversion of Government property (including records).
18 U.S.C. § 793	Gathering, Transmitting, or Losing Defense Information. Prohibits the unauthorized gathering, transmission or loss of defense information.
18 U.S.C. § 1001	False Statements or Entries Generally. Prohibits knowing and willful making of any false, fictitious, or fraudulent statement or representation in regard to a matter within the jurisdiction of any federal department or agency. (This provision could apply if a contractor obtained data from the government by such a statement or representation.)
18 U.S.C. § 1341	Frauds and Swindles. Prohibits use of the mail in any way in furtherance of any scheme to defraud.

18 U.S.C. § 1343 — Fraud by Wire, Radio or Television.

Prohibits transmission in interstate or foreign commerce by wire, radio, or television of any information for the purpose of furthering a scheme to defraud.

18 U.S.C. § 1905 — Disclosure of Confidential Information.

Prohibits the unauthorized disclosure of confidential (commercial proprietary) information.

CIVIL STATUTES

10 U.S.C. § 2301(b)(6),(7) — Congressional Defense Procurement Policy.

Requires use of commercial products and requirement descriptions based upon "functions to be performed or performance required," whenever practicable.

10 U.S.C. § 2305(a); 41 U.S.C. § 253(a) — Competition in Contracting Act (Contracts: Planning, Solicitation, Evaluation and Award Procedures).

Solicitations must include specifications which permit full and open competition; restrictive provisions or conditions are permitted only to the extent necessary to satisfy agency needs or as otherwise authorized by law.

The type of specification in a solicitation depends on the nature of the needs of the executive agency and available market. Subject to such needs, specifications may be stated in terms of:

(1.) function, so that a variety of products or services may qualify;

(2.) performance, including specifications which describe the range of acceptable characteristics or the minimum acceptable standards; or

(3.) design requirements.

10 U.S.C. § 2319;
41 U.S.C. § 253(c)

Encouragement of New Competitors.

Sets forth procedures for establishing a procuring agency's qualification requirements, i.e., testing requirements or other quality assurance demonstrations that must be completed by an offeror before award of a contract. Among other things, the agency must: 1.) prepare a written justification for any such restrictions; and 2.) insure that these written requirements are only as restrictive as necessary to satisfy the agency's minimum qualification needs.

10 U.S.C. § 2325

Preference for Nondevelopmental Items.

DOD must insure, to the maximum extent practicable, that its supply requirements are stated in terms of functions to be performed, performance required or essential physical characteristics. Moreover, such requirements are to be defined so that nondevelopmental items can be procured to fullfill these requirements.

40 U.S.C. § 759(f)

Standards and Guidelines for Federal Computer Systems; Promulgation, Disapproval or Modification, etc.

Authorizes the Secretary of Commerce to promulgate standards and guidelines pertaining to Federal computer systems. Compulsory standard waivers may be granted when required for mission accomplishment or cost savings.

40 U.S.C. § 759(g)

Procurement from Sole Source or by Specific Make and Model.

Justifications and approvals are required for any procurement of automatic data processing equipment (under the Brooks Act) where the Government's minimum needs are so restrictive that only one manufacturer is capable of satisfying such needs. Justification and approval is required even if more than one bid or offer is received and even if the procurement obtains price competition.

OFFICE OF MANAGEMENT AND BUDGET (OMB) POLICY DIRECTION

OMB Circ. A-119 — Federal Participation in Development and Use of Voluntary Standards (January 17, 1980).

Establishes policies for DOD and other executive branch agencies that work with organizations which plan, develop, produce and coordinate voluntary standards for materials, products, systems, services, processes and practices. It outlines DOD policies for adopting and using such standards in procurement activities. It also provides that the Government will normally rely on such voluntary standards, and participate in voluntary standard organizations, whenever such participation is in the public interest.

OMB Circ. A-120 — Guidelines for the Use of Consulting Services (April 14, 1980).

This circular authorizes the employment of experts and consultants to obtain highly specialized services when these services cannot be performed by current employees or obtained through routine civil service procedures.

FEDERAL ACQUISITION REGULATION (FAR) PROVISIONS

FAR Part 10 — Specifications, Standards and Other Purchase Descriptions.

FAR 10.001 — Definitions.

A "specification" is defined as "a description of the technical requirements for a material, product, or service which includes criteria for determining whether these requirements are met. Specifications shall state only the Government's actual minimum needs and be designed to promote full and open competition, with due regard to the nature of the supplies or services to be acquired." [Emphasis supplied.]

"Standard" is defined as "a document that establishes engineering and technical limitations and applications of items, materials, processes, methods, designs, and engineering practices. It includes any related criteria deemed essential to achieve the highest practical degree of uniformity in materials or products, or interchangeability of parts used in those products. Standards may be used in specifications, invitations for bids, requests for proposals, and contracts."

FAR 10.002 Policy.

Implements the Competition in Contracting Act, 10 U.S.C. § 2305(a) and 41 U.S.C. § 253(a) (referenced previously), by requiring agencies to specify their needs in ways which will promote full and open competition. Specifications must reflect the minimum needs of the agency, and the market(s) available to satisfy such needs. Agency requirements may be stated in terms of function, performance or design requirements. Acquisition policies and procedures shall require descriptions of agency requirements, whenever practicable, stated in terms of functions to be performed or the performance required.

FAR 10.003 Responsibilities.

GSA prepares, maintains and controls specifications and standards for commonly used products; DOD prepares, maintains and controls military specifications and standards.

FAR 10.004 Selecting Specifications or Descriptions for Use.

Prescribes procedures for selecting specifications or descriptions so that only the Government's actual minimum needs are met and satisfied in a manner that is designed to promote full and open competition. Agencies are to review existing specifications and tailor these to their particular needs.

An agency may use a purchase description only under specified conditions. The minimum acceptable purchase description is the identification of a requirement by use of "brand name or equal."

Purchase descriptions of services are to outline (to the greatest degree practicable) the specific services the contractor is expected to perform.

FAR 10.005 Management of Purchase Descriptions.

Requires agencies to ensure compliance with the policies regarding listed specifications and standards. If a listed specification or standard does not meet a particular minimum need of the Government, it may be amended.

FAR 10.006 Using Specifications and Standards.

Provides that specifications and standards listed in the Index of Federal Specifications and Standards are mandatory for all agencies except when:

(1.) the acquisition is required under an unusual and compelling urgency and using the indexed product description would delay obtaining the requirement;

(2.) the item is being purchased under the appropriate small purchase limitation in FAR Part 13;

(3.) the product is acquired and used overseas;

(4.) the item is being acquired for authorized resale (except military clothing);

(5.) there are nationally recognized industry or technical source specifications and standards for contruction or new installations of equipment; or

(6.) the agency is implementing agency regulations regarding the acquisition of commercial products, even though there is an indexed specification.

Military specifications and standards (as well as any voluntary standards which have been adopted and listed in DOD's Index of Specifications and Standards) are mandatory in DOD, absent any of the exceptions listed above.

FAR 10.007 Deviations.

Permits deviations from existing specifications and standards when none of the exceptions listed previously apply, and the existing specification does not meet the agency's minimum needs. Deviations must be justified and approved. If frequent deviations are necessary, an agency must recommend a change in the specification.

FAR 10.008 Identification and Availability of Specifications.

Copies of indexed specifications are not normally provided with solicitations. However, under certain circumstances, they will be made available to assist contractors in bid preparation. Brand name or equal descriptions must be furnished with the solicitation.

FAR 10.009 User Satisfaction.

Requires agencies to encourage users to communicate with acquisition organizations regarding their experiences using different specifications.

FAR 10.010 Acquiring Used or Reconditioned Material, Former Government Surplus Property and Residual Inventory.

Expresses general preference for acquisition of new, including recycled, property. Used or reconditioned property can be acquired if deemed acceptable and the solicitation clearly identifies any such supplies which do not have to be new.

The following clauses implement FAR Part 10, "Specifications, Standards and Other Purchase Descriptions":

FAR 52.210-1 Availability of Specifications Listed in the Index of Federal Specifications and Standards.

FAR 52.210-2 Availability of Specifications Listed in the DOD Index of Specifications and Standards (DODISS).

FAR 52.210-3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications and Standards.

FAR 52.210-4 Availability for Examination of Specifications Not Listed in the Index of Federal Specifications and Standards.

FAR 52.210-5 New Material.

FAR 52.210-6 Listing of Used or Reconditioned Material, Residual Inventory and Former Government Surplus Property.

FAR 52.210-7 Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property.

FAR Part 11 — Acquisition and Distribution of Commercial Products.

Prescribes policies and procedures for the acquisition of commercial products and the use of commercial distribution systems.

FAR 11.001 — Definitions.

"Commercial product" means a product, such as an item, material, component, subsystem, or system, sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices.

FAR 11.003 — General.

The acquisition of commercial products begins with a statement of the Government's needs in functional terms.

FAR 11.004 — Market Analysis.

The Government often requires a market analysis to determine whether it can meet its needs through commerical products which are already available.

FAR 11.005 — Acceptability.

Acceptability depends upon reliability, performance, logistics support requirements and cost, among other things. Products that have proved satisfactory in the past and that meet detailed specifications should be considered for award in solicitations for commercial products to fill the same requirements -- if the specifications are current and if all potential suppliers are competing on a similar basis.

FAR Subpart 9.5 — Organizational Conflicts of Interest.

FAR 9.501 — Definitions.

An "organizational conflict of interest" exists when the nature of the work to be performed under a proposed Government contract may, without some restriction on future activities: (1.) result in an unfair competitive advantage to the contractor; or (2.) impair the contractor's objectivity in performing the contract work.

FAR 9.504 — Contracting Officer Responsibilities.

Requires contracting officers to identify and evaluate potential organizational conflicts of interest and to avoid, neutralize or mitigate significant potential conflicts before contract award.

Contracting officers are advised to seek advice from legal counsel and technical specialists as they make this evaluation, and as they develop protective solicitation provisions and contract clauses.

Any potential conflict is to be resolved before a solicitation is issued.

Only substantive issues concerning potential organizational conflicts of interest require written documentation by the contracting officer.

FAR 9.505 — General Rules.

Decisions regarding potential organizational conflict of interests must be based on common sense, good judgment and sound discretion. The two fundamental OCI principles are to:

(1.) prevent the existence of conflicting roles which might bias a contractor's judgment; and,

(2.) to prevent unfair competitive advantage.

FAR 9.505-1

Providing Systems Engineering and Technical Direction.

Prohibits contract award to any contractor that provides systems engineering and technical direction (i.e., determining program specifications) on a related acquisition of that system.

FAR 9.505-2

Preparing Specifications or Work Statements.

Prohibits a contractor who furnishes complete specifications covering nondevelopmental items for use in a competitive acquisition from furnishing those items either as a contractor or as a subcontractor, for a reasonable period of time (at least, for the duration of the initial production contract).

Exceptions will be made for contractors that furnish (at Government request) specifications regarding a product they provide, and in situations in which contractors, acting as industry representatives, assist Government agencies in the preparation of specifications if such assistance is supervised and controlled by Government representatives.

If the Government eliminates a contractor that has furnished specifications for nondevelopmental equipment from competition for a reasonable time, it should receive unbiased advice from the nondevelopmental contractor regarding the content of the subject specifications, and help prevent allegations of favoritism in the award of any follow-on production contracts.

Development work (i.e., R&D) is different. In developmental efforts, firms which have done the most advanced research in the field are normally selected; this competitive advantage, however, is not considered unfair, and follow-on competition restrictions are not imposed.

Agencies should normally prepare their own statments of work. If a contractor has prepared a work statement which will be used in a competitive systems acquisition, it may not supply the system unless: (1.) it is the sole source; (2.) it has participated in the development and design work; or (3.) more than one contractor has been involved in preparing the work statement.

FAR 37.2 — Consulting Services.

Defines consulting services and provides examples, including advice on program plans and acquisition strategies. Consulting services are a legitimate way to improve Government services and operations. They provide specialized opinions or technical advice which is not available within the agency, as well as outside points of view.

DOD SUPPLEMENT TO THE FAR (DFARS) PROVISIONS

DFARS 10.001 — Definitions.

"Nondevelopmental" means any item of supply available in the commercial marketplace. It also includes any previously developed item of supply currently in use, or an item in use that requires only minor modification to meet a new need.

If production items are not available commercially or in current use, they are still considered "nondevelopmental" if they otherwise meet the definition. For example, a commercial item that has been developed (but not yet marketed) would fall into this category, as would an item of supply, developed for an earlier contract, which has been produced but is not in current use.

DFARS 10.002 — Policy.

DOD policy, as per 10 U.S.C. § 2325, is to satisfy its supply requirements through the acquisition of nondevelopmental items to the maximum extent possible.

DFARS 10.004 — Selecting Specifications or Descriptions for Use.

"Brand name or equal" purchase descriptions must set forth salient physical, functional or other characteristics of the referenced products which are essential to the Government's needs.

Solicitations must describe fully the product sought (e.g., make, model, catalog number and address of manufacturer).

The Government must also identify system components which do not require brand name or equal specifications.

Bid samples may be required of offerors who submit "or equal" offers, but any such offers must be equal in all material respects.

DFARS 52.210-7000 — Brand Name or Equal.

This clause sets forth requirements for bidding on a brand name or equal specification. Bidders must advise the Government if they are offering an "equal" product, and they must furnish descriptive material to show that it is equal.

Other DFARS clauses, 52.210-7001 - 52.210-7003, provide information regarding the availability of specifications, standards, drawings and other pertinent documents.

FEDERAL INFORMATION RESOURCES MANAGEMENT REGULATION (FIRMR) PROVISIONS

41 C.F.R. 201-8 — Implementation and Use of Federal Standards.

Sets forth requirements regarding the use of mandatory and interim Federal Information Processing Standards (FIPS) and Federal Telecommunications Standards (FED-STD), including information on requirements for waivers and exceptions. Each agency must determine the applicability of a particular standard to its particular requirement(s).

41 C.F.R. 201-30.013 Specifications.
Specifications should be designed to obtain full and open competition from all responsible sources. The type of specification used by an agency depends upon its needs.

Functional specifications which maximize competition are preferred. If they cannot be used, the order of preference for other specification types is as follows:

(1.) Equipment performance specifications;

(2.) Software and equipment plug-to-plug compatible functionally equivalent specifications;

(3.) Brand name or equal specifications; and

(4.) Specific make and model specifications. (These are considered restrictive and must be justified.)

41 C.F.R. 201-32.107 Industry Review of ADP Specifications.

An agency may release specifications for industry review prior to solicitation release to insure that the specifications are clearly stated, readily understandable, and to take advantage of current ADP technology.

DEPARTMENT OF DEFENSE
DIRECTIVES (DODD) AND INSTRUCTIONS (DODI)

DODD 1442.4 Guidelines for the Employment of Experts Consultants (May 30, 1984).

Implements OMB Circular No. A-120 regarding the employment of experts and consultants in order to obtain highly specialized services, when these services cannot be performed by present employees or obtained through routine civil service procedures. Appropriate conflict of interest warnings must be given to experts and consultants, who must also file a "Confidential Statement of Affiliations and Financial Interests."

DODD 4120.3

Defense Standardization and Specification Program (February 10, 1979).

Establishes policies for the Defense Standardization and Specification Program (DSSP), and authorizes publication of the DOD Manual 4120.3-M, which prescribes procedures governing execution of the DSSP. DOD policy is to have a single integrated DSSP and a uniform series of specifications, standards and related documents which state only the Government's actual needs and which fully describe these supplies and services in a manner that will encourage competition.

DODD 4120.20

Development and Use of Non-Government Standards (March 28, 1988).

Implements OMB Circular No. A-119 in DOD. DOD policy is to rely on non-Government standards whenever practical, and to participate in planning and developing non-Government standards when it is in DOD's best interests.

DODD 4120.21

Application of Specifications, Standards, and Related Documents in the Acquisition Process (November 3, 1980).

Authorizes the publication of DoD 4120.21-M, a manual on the application of specifications, standards and related documents in the acquisition process. Controls are placed on the use of nonproduct documents (documents that establish and define requirements for management, design processes, procedures, practices, methods and data applicable to a broad range of products) in acquisition programs.

GENERAL ACCOUNTING OFFICE (GAO) DECISIONS ON SPECIFICATIONS WHICH ALLEGEDLY FAVOR ONE CONTRACTOR OVER ANOTHER

The GAO will not hear protests which merely allege that Government specifications favor one contractor over another, absent preferential treatment or unfair actions by the procuring agency. GAO's bid protest authority extends only to those cases which involve an alleged violation of law or regulation. Although procurements which rely on other than full and open competition must be fully justified and approved, they are not illegal per se. In fact, sometimes the Government may be forced to sole source a procurement in order to satisfy its actual minimum needs, e.g., to protect an incumbent contractor's proprietary data rights. Sole sourcing under these circumstances would not be a matter of illegal favoritism. FAR 6.302-1(b)(2).

There are basically two situations, however, when the GAO will review allegations regarding preferential or biased Government specifications: 1.) when the Government's specifications purportedly describe more than the Government's actual minimum needs, and 2.) when contract award is made to an offeror allegedly tainted with a prohibited organizational conflict of interest (OCI).

Actual Minimum Needs. Under the Competition in Contracting Act, P.L. 98-369, Title VII, July 18, 1984, 98 Stat. 1175, codified at 10 U.S.C. §§ 2301-2306 and elsewhere, and as further implemented by the FAR, a solicitation must incorporate specifications which permit "full and open" competition; competitive restrictions are permitted only to the extent necessary to satisfy the actual minimum needs of the executive agency or as authorized by law. At the same, the GAO will not substitute its judgment for that of the agency's, absent clear and convincing evidence that the Government has misstated its needs, particularly in those cases where technical judgments are necessary. The GAO, however, will review agency justifications regarding restrictive specifications, and the Comptroller General can require modifications of questioned solicitations or even overturn contract awards based on inadequate justifications.

Organizational Conflicts of Interest. The FAR's OCI restrictions are designed to prevent: 1.) the existence of conflicting roles which might bias a contractor's judgment or objectivity (e.g., improper use by a systems engineering/technical direction contractor of its own in-house capabilities over those of a potential competitor's), and 2.) unfair competitive advantages (e.g., the potential unfair advantage of an offeror that prepared a nondevelopmental Government statement of work for a solicitation which it bid and won). FAR 9.505.

The cases which follow are a representative sampling of recent GAO protests alleging overly restrictive Government specifications and prohibited contractor OCI's.

Actual Minimum Needs

Yale Materials Handling Corp., Comp. Gen. Dec. B-230209, 88-1 CPD ¶ 302 (1988).	"The burden initially is on the procuring agency to establish prima facie support for its contention that the restriction is reasonably related to meet its minimum needs. Once the agency establishes support for the challenged solicitation terms, the burden shifts to the protestor to show that they are clearly unreasonable." "[W]here, as here, any competitive advantage is due to a prior contract, and not to preference or unfair action by the government, the government is not required to equalize the competitive position of the bidders." Protest dismissed in part and denied in part.
Fiber Master, Inc., Comp. Gen. Dec. B-228089, 87-2 CPD ¶ 456 (1987).	"[W]e will not question an agency's determination of its actual minimum needs unless there is a clear showing that the determination has no reasonable basis." Protest denied.
G.S. Link and Associates, Comp. Gen. Dec. B-229604, B-229606, 88-1 CPD ¶ 70 (1988).	"[T]he fact that a requirement may be burdensome or even impossible for a particular firm to meet does not make it objectionable if it properly reflects the agency's minimum needs." Protests denied in part and dismissed in part.
Minority Communications, Inc., Comp. Gen. Dec. B-228230.2, 88-1 CPD ¶ 88 (1988).	"The responsibility for formulating solicitation requirements that reflect the minimum needs of the government is primarily that of the contracting agency, and such requirements are unobjectionable in the absence of a showing that they do not reflect the agency's minimum needs." Protest denied.

M.C. & D. Capital Corp., Comp. Gen. Dec. B-225830, 87-2 CPD ¶ 32 (1987).	"An agency can specify requirements for supplies which possibly only one supplier is able to produce, provided those requirements are necessary to meet its minimum needs. ... Specifically, restrictive requirements are proper where compatibility of new equipment or supplies with those already in use is required." Protest denied.

Organizational Conflicts of Interests

Eagle Research Group, Inc., Comp. Gen. Dec. B-230050, 1988 U.S. Comp. Gen. Lexis 542 (May 13, 1988).	The OCI issue is "not whether Meridan had access to DOE's confidential information, but whether Meridan obtained such information and used it to improve its competitive standing in the present procurement. Eagle has proffered no evidence that Meridan used information it obtained through its contractual relations with DOE to make its proposal more attractive on the basis of either technical merit or cost. Rather, all that has been presented by Eagle are conjecture and self-serving statements as to how Meridan could have cheated to win this contract award." Protest denied.
Associated Chemical and Environmental Services, U.S. Pollution Control, Inc., and Chemical Waste Management, Inc., Comp. Gen. Dec. B-228411.3, B-228411.4, B-228411.5, 88-1 CPD ¶ 248 (1988).	The Government is not required to exclude offerors from competition which "might possess advantages and capabilities due to the prior experience of its parent company, if there is no evidence of preferential treatment by the government or access to information unavailable to other offerors, and the parent company did not prepare material leading predictably, directly and without delay to the work statement." Protests denied.

Armament Engineering Co., Comp. Gen. B-228445, B-228582, 88-1 CPD ¶ 121 (1988).	The Army's contract for technical data packages to a contractor which had "both engineering and production capabilities does not violate the Federal Acquisition Regulation subpart 9.5 . . . the record fails to show that the awardee's development type work under this contract will create a potential conflict of interest. The record indicates the work will not lead to future competitive production items, but that production will be handled in-house." Protests denied in part and dismissed in part.
ESCO, Inc., Comp. Gen. B-225565, 87-1 CPD ¶ 450 (1987).	"Incumbent contractor need not be excluded from competition because of an alleged organizational conflict of interest where (1) the contractor neither prepared the statement of work nor provided 'material leading directly, predictably, and without delay' to the statement of work, and (2) did not provide systems engineering services for items to be supplied under the contract as prohibited by regulations." Protest denied.
Coopers & Lybrand, Comp. Gen. B-224213, 87-1 CPD ¶ 100 (1987).	"Offeror is not prohibited from competing for a procurement for services to enhance industrial preparedness because it previously prepared a list of recommended actions to achieve the same objectives under a grant from the procuring agency. The offeror was not employed to prepare or assist in preparing the statement of work; only a few of the recommended actions resemble tasks in the statement of work; and the offeror could not reasonably have gained any competitive advantage from the agency's consideration of the recommended actions in developing the solicitation."

Protest denied in relevant part and sustained in part (on other grounds).

DRAFT

COMPENDIUM

OF LAWS, REGULATIONS, DIRECTIVES AND INSTRUCTIONS

REGARDING THE DISCLOSURE OF DATA

IN THE DEPARTMENT OF DEFENSE

SEPTEMBER 1988

DRAFT

TABLE OF CONTENTS

Introduction 1

Part I GOVERNMENT PROTECTION OF CLASSIFIED DATA 2

Statutes 2
Criminal 2
Civil 4
Executive Orders 5
Office of Management and Budget (OMB) Circulars 6
Federal Acquisition Regulations (FAR) 6
DOD Supplement to the FAR (DFARS) 8
DOD Directives (DODD) and DOD Instructions (DODI) 9

Part II GOVERNMENT PROTECTION OF CONTRACTOR PROPRIETARY DATA 15

Statutes 15
Criminal 15
Civil 16
Executive Orders 18
FAR Provisions 19
DFARS Provisions 26
DODD & DODI 34

Part III GOVERNMENT PROTECTION OF PROCUREMENT SENSITIVE DATA 37

A. Non-Proprietary Contractor Proposals . . . 37

Statutes 37
Executive Orders 39
OFPP Policy Letter 39
FAR Provisions 39
DFARS Provisions 48

B. Government Evaluation Plans 48

FAR Provisions 49
DODD & DODI 51

Part IV	GOVERNMENT PROTECTION OF UNCLASSIFIED GOVERNMENT PLANNING DATA	53
	Statutes	53
	OMB Policy Circulars	54
	FAR Provisions	55
	DFARS Provisions	55
	DODD & DODI	56
App. A	Synopsis of Penalties for Unlawful Disclosure of Proprietary Data or Government Planning and Budgetary Information	58

INTRODUCTION

Release of Department of Defense (DOD) procurement-related data, authorized and unauthorized, is covered under a broad spectrum of legal and regulatory controls: criminal and civil statutes, Executive Orders, Federal and Defense Acquisition regulations (the FAR and DFARS), Office of Management and Budget (OMB) and Office of Federal Procurement Policy (OFPP) policy directives, plus a multitude of DOD and uniformed service procurement regulations and instructions. Some disclosure restrictions apply to even non-classified, non-proprietary information; other rules focus on more specific areas such as classified data.

The purpose of this compendium is to outline the principal controls which may be used to police the unauthorized release of procurement-related data. The study focuses on four important areas: 1.) classified data; 2.) contractor proprietary data; 3. Government procurement sensitive data (including non-proprietary Government evaluation plans and contractor proposals); and 4.) unclassified Government planning data (such as budgetary or long-range acquisition plans).

Two qualifications are in order. First, although various Government disclosure controls are also imposed on data which is not procurement-related (e.g., grand jury proceedings and Privacy Act matters), this outline will not address safeguards such as these, since they are designed primarily to protect individual privacy rights and not the integrity of the procurement process -- which is the focus of this study.

Second, any balanced discussion of DOD disclosure restrictions on procurement-related data should also reference statutes and regulations which require the release of certain non-exempted, procurement data. Consequently, the Freedom of Information Act is mentioned in several areas, as well as regulations which require the release of certain long-range acquisition planning information. In order to deter potential anti-competitive practices, the Government must always balance its need to safeguard procurement sensitive data against the public's interest in full and open Government.

Even a cursory review of this compendium should indicate that existing statutory and administrative disclosure controls are adequate to combat any unauthorized release of procurement-related information. What the national security requires now is not additional legislation -- but rather, the vigorous prosecution of those who choose to subvert the integrity of the procurement process for private gain.

GOVERNMENT PROTECTION OF CLASSIFIED DATA

Part I. Classified data is information, the disclosure of which could endanger the national security. Numerous rules govern the dissemination and use of classifed data during the procurement process, and the following is a representative outline of the various statutory, administrative and policy restrictions regarding its release, protection and use. Depending upon the manner in which improperly obtained data is used, criminal prosecution under various false claims, false statements, and fraud statutes cited below might also be feasible.

STATUTES

CRIMINAL STATUTES

18 U.S.C. § 286 — Conspiracy to Defraud the Government With Respect to Claims.

Provides for the punishment of anyone who enters into an agreement to defraud the United States by obtaining, or aiding to obtain, the payment of any false, fictitious or fraudulent claim.

18 U.S.C. § 287 — False, Fictitious or Fraudulent Claims.

Provides for the criminal punishment of anyone who makes or presents a claim against the United States, knowing that the claim is false, fictitious or fraudulent.

18 U.S.C. § 371 — Conspiracy to Commit an Offense or to Defraud the United States.

Provides for the punishment of any person who, with one or more other persons, conspires either to commit any offense against the United States or to defraud the United States.

18 U.S.C. § 641 — Embezzlement and Theft of Public Money, Property or Records.

Provides for the punishment of any person who converts money, property or records to his own use or the use of another, or who, without authority, sells, conveys or disposes of any record or thing of value of the United States.

18 U.S.C. § 793 Gathering, Transmitting, or Losing Defense Information.

Provides for the punishment of persons who obtain or deliver information relating to the national defense if they intend or have reason to believe that the information is to be used to the injury of the United States or to the benefit or advantage of any foreign nation. Includes a prohibition against the willful transmission of information lawfully obtained to any person not entitled to receive it.

18 U.S.C. § 794 Gathering or Delivering Defense Information to Aid a Foreign Government.

Provides for the punishment of any person who, with the intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, gathers for or delivers, defense information to any foreign government or to any representative thereof, either directly or indirectly.

18 U.S.C. § 798 Disclosure of Classified Information.

Provides for the punishment of any person who knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person any classified information concerning codes, ciphers, or cryptographic systems of the United States or concerning the design, construction, use, maintenance, or repair of any device used or planned for use for cryptographic or communication intelligence purposes.

18 U.S.C. § 1001 False Statements or Entries Generally.

Provides for the criminal punishment of anyone who knowingly and willfully makes any false, fictitious or fraudulent statement or representation in regard to a matter within the jurisdiction of any federal department or agency.

18 U.S.C. § 1341 Frauds and Swindles.

Provides for the criminal punishment of anyone who uses the mails in any way in furtherance of any scheme to defraud.

18 U.S.C. § 1343 Fraud by Wire, Radio or Television.

Provides for the criminal punishment of anyone who transmits in interstate or foreign commerce by wire, radio or television any information furthering a scheme to defraud.

50 U.S.C. § 783 Communication of Classified Information by Government Officer or Employee.

Makes it unlawful for any officer or employee of the United States to communicate classified information in any manner to any other person he knows or reasonably believes to be an agent or representative of a foreign government, unless specifically authorized to make such a disclosure.

CIVIL STATUTES

5 U.S.C. § 552 Freedom of Information Act (FOIA).

Authorizes an agency to withhold from public disclosure agency records specifically authorized, under criteria established by an Executive Order, to be kept secret in the interest of national defense or foreign policy, and which are, in fact, properly classified pursuant to such Executive Order. It also permits the withholding of records which are specifically exempted by statute provided, that the statute either: 1.) does not permit discretion with regard to the matter; or 2.) establishes particular criteria for withholding records or refers to particular types of matters to be withheld.

10 U.S.C. § 130 Authority to Withhold from Public Disclosure Certain Technical Data.

Authorizes the Secretary of Defense to withhold from public disclosure any technological data with military and space applications, if the data is subject to export controls.

22 U.S.C. § 2551 et seq. Arms Control and Disarmament Act.

Requires the Director of the Arms Control and

Disarmament Agency to establish security requirements for access to classified information by Government and contractor personnel.

42 U.S.C. § 2011 et seq. — Atomic Energy Act.

Provides authority for the control of information including a requirement for determinations by the Departments of Energy and Defense regarding the publication of Restricted Data and who shall otherwise have access to it. Restricted Data means all data concerning: 1.) the design, manufacture, or utilization of atomic weapons; 2.) the production of special nuclear material; or 3.) the use of special nuclear material in the production of energy.

50 U.S.C. § 401 et seq. — National Security Act.

Provides for the establishment of integrated policies and procedures for the departments, agencies, and functions of the Government relating to the national security.

EXECUTIVE ORDERS

E.O. 10865 — Safeguarding Classified Information Within Industry (Feb. 23, 1960, as amended by Ex. Ord. No. 10909, Jan. 18, 1961; Ex. Ord. No. 11382, Nov. 28, 1967).

Requires certain Presidential appointees, including the Secretary of Defense, to prescribe the requirements, restrictions, and other safeguards they consider necessary to protect: 1.) releases of classified information to or within United States industry that relate to bidding on, or the negotiation, award, performance, or termination of, contracts with their respective agencies; and 2.) other releases of classified information to or within industry that such agencies are responsible for safeguarding.

E.O. 12356 — National Security Information (April 2, 1982).

Prescribes a uniform system for classifying, declassifying, and safeguarding national

security information. Agencies are required to establish controls to ensure that classified information is used, processed, stored, reproduced, transmitted, and destroyed only under conditions that will provide adequate protection and prevent access by unauthorized persons. Agencies may create special access programs for the protection of particularly sensitive information.

OFFICE OF MANAGEMENT AND BUDGET (OMB) GUIDANCE

OMB Circ. A-71 — Security of Federal Automated Information Systems.

Promulgates policy and responsibilities for the development and implementation of computer security programs by executive branch departments and agencies.

FEDERAL ACQUISITION REGULATION (FAR) PROVISIONS

FAR 4.4 — Safeguarding Classified Information Within Industry.

Requires contracting officers to follow agency procedures for determining whether access to classified information may be required by offerors, or by a contractor, during contract performance. Classified acquisitions must be conducted in accordance with the Defense Industrial Security Program (DISP), and solicitations must include an appropriate Security Requirements clause.

FAR 5.102(b) — Availability of Solicitations.

Requires the contracting officer to make solicitations for classified acquisitions available to the extent consistent with agency security requirements.

FAR 5.202(a) — Exceptions.

Exempts the contracting officer from submitting notice of a proposed contract action to the Commerce Business Daily when a synopsis cannot

be worded to preclude the disclosure of an agency's needs and such a disclosure would compromise the national security.

FAR 5.403 Requests from Members of Congress.

Requires contracting officers to refer to the agency head, and inform the legislative liaison office of, any proposed reply to a Member of Congress requesting detailed contractual information, if the proposed response would result in the disclosure of classified information.

FAR 5.404-1(b)(1) Release Procedures.

Requires agency heads to ensure that classified information is released through existing security channels in accordance with agency security regulations.

FAR 6.302-6(b) National Security.

Provides an exemption from the requirement for full and open competition when the disclosure of an agency's needs would compromise the national security.

FAR 14.402.2 Classified Bids.

Provides that the opening of classified bids shall not be accessible to the general public.

FAR 14.408.2 Award of Classified Contracts.

Requires the contracting officer to advise the unsuccessful bidders for classified contracts to take disposition action on any classified information that was furnished or created in connection with the solicitation in accordance with agency procedures.

FAR 24.202(b) Freedom of Information Act.

Advises the contracting officer that requests may be received for contract records containing classified information, and that the Freedom of

Information Act exempts such material from public disclosure.

FAR 27.207 — Classified Contracts.

Requires the contracting officer to review a patent application not yet filed by the contractor in order to ascertain the application's proper security classification, and to advise the contractor of the procedures to be followed if it contains classified subject matter.

FAR 52.204-2 — Security Requirements.

Requires the contractor to comply with the Security Agreement (DD Form 441), including the Defense Industrial Security Manual for Safeguarding Classified Information (DOD 5220.22-M).

FAR 52.227-10 — Filing of Patent Applications--Classified.

Provides procedures the contractor must follow before filing a patent application in the United States that discloses any classified subject matter from the contract.

DOD SUPPLEMENT TO THE FAR (DFARS) PROVISIONS

DFARS 5.102 — Availability of Solicitation.

Requires the contracting officer to consider whether classified matter is involved when he determines the number of copies of a solicitation that are to be maintained, and to consider the means by which access will be granted to classified specifications which may have to be kept in a set location.

DFARS 5.404-1 — Release Procedures.

Requires that classified information be released through existing security channels in accordance with the DoD Industrial Security Regulation (DoD 5220.22R).

DEPARTMENT OF DEFENSE DIRECTIVES (DODD) AND INSTRUCTIONS (DODI)

DODD 5200.1 DoD Information Security Program (June 7, 1982).

Establishes a DoD Information Security Program. The program is administered to ensure, among other things, that: 1.) national security information is properly classified; 2.) classified information inventories are reduced to the minimum necessary to meet operational requirements, thereby affording better protection to the remaining classified material; and 3.) DoD personnel who require access to classified information in the conduct of official business are properly trained.

DODD 5200.1-R Information Security Program Regulation (June, 1986).

Establishes DoD policy with respect to the security classification, declassification, and marking of DoD information. The regulation also sets DoD policy for the safeguarding of classified information to include accountability, storage, transmission and destruction.

DODD 5200.12 Conduct of Classified Meetings (May 16, 1988).

Establishes policy, procedures and responsibilities for the conduct of meetings, such as conferences, seminars, training courses, symposia, and the like, at which classified information is presented, in order to provide adequate security for that material.

DODD 5200.21 Dissemination of DoD Technical Information (September 27, 1979).

Establishes a DoD Technical Information Program to ensure the complete and timely exchange among DoD technical activities of all technical information generated by or relevant to the pursuit of DoD technical programs, while giving due consideration to security requirements and access restrictions. This regulation also establishes certification procedures to control the access to DoD technical information by any

DoD office, contractor, subcontractor or DoD potential contractor.

DODD 5200.28 — Security Requirements for Automated Information Systems (AISs) (March 21, 1988).

Provides mandatory, minimum security requirements for the protection of classified, sensitive unclassified, and unclassified information processed in automated information systems (AISs).

DODD 5200.30 — Guidelines for Systematic Declassification Review of Classified Information in Permanently Valuable DoD Records (March 21, 1983).

Establishes procedures and assigns responsibilities for the systematic declassification review of information classified in accordance with Executive Order 12356; Information Security Office Directive No. 1 Concerning National Security Information (June 23, 1982); and DoD orders, directives, and regulations governing security classification.

DODD 5205.2 — DoD Operations Security Program (July 7, 1983).

Governs the access to information about friendly capabilities and intentions by identifying, controlling and protecting the indicators associated with planning and conducting military operations and other activities.

DODD 5205.7 — Special Access Programs (June 5, 1987).

Establishes policy and guidance concerning the security administration of Special Access Programs (SAPs). The Directive applies both to DoD and to contractors and consultants of the DoD components when contract performance depends on access to a SAP.

DoD policy is that the establishment of SAPs requires special management measures to ensure, among other things, that: 1.) they are established only when there is a compelling requirement for security beyond that provided by the DoD Information Security Program; 2.)

they comply with applicable provisions of law and regulation; 3.) security is provided for soliciting, awarding, and administering contracts and purchase requests; and 4.) a method is established for financial accountability and for reporting irregularities without violating security requirements. Access to SAP information is minimal; no person shall receive access solely because of rank, title or position.

DODD 5210.2 — Access to and Dissemination of Restricted Data (January 12,1978).

Establishes policies and procedures governing access to and dissemination of Restricted Data (i.e., all information concerning: 1.) the design, manufacture or utilization of atomic weapons; 2.) the production of special nuclear material; or 3.) the use of special nuclear material in the production of energy).

Within and between DoD components, including contractor activities, access must be required in the performance of official duties and there must be a valid DoD security clearance at an appropriate level.

DODD 5210.50 — Unauthorized Disclosure of Classified Information to the Public (October 18, 1982).

Establishes policies, assigns responsibilities and prescribes procedures for reporting and investigating unauthorized public disclosures of classified information by DoD personnel and DoD contractors and their employees. DOD policy is that all known or suspected unauthorized public disclosures of classified information must be reported and investigated to determine the extent of damage to national security, and that appropriate disciplinary and corrective actions are taken as required.

DODD 5220.6 — Defense Industrial Personnel Security Clearance Review Program (DIPSCR) (August 12, 1985).

Provides policy, criteria and procedures for the DIPSCR, including factors that may be considered in determining whether to revoke or deny a clearance.

DODD 5220.22 — DoD Industrial Security Program (December 8, 1980).

Authorizes the publication of the Industrial Security Regulation (DoD 5220.22-R), which prescribes detailed policies and procedures for carrying out responsibilities under the Defense Industrial Security Program (DISP), and the publication of the Industrial Security Manual for Safeguarding Classified Information (DOD 5220.22-M), which is part of the basic contract between the Government and those contractors who require access to classified information.

The DISP is designed to protect classified information provided to or within U.S. industry that relates to bidding on, negotiation, award, performance or termination of contracts with DoD, as well as other classified information provided to or within industry that DoD has responsibility for safeguarding.

DODD 5220.28 — Application of Special Eligibility and Clearance Requirements in the SIOP-ESI Program for Contractor Employees (March 8, 1978).

Establishes basic security eligibility requirements for access to Single Integrated Operational Plan - Extremely Sensitive Information (SIOP-ESI) for contractor employees.

DODD 5230.9 — Clearance of DoD Information for Public Release (April 2, 1982).

Establishes policies and procedures, and assigns responsibilities, governing the review and clearance of information proposed for publication or public release by DoD personnel. Former DoD employees may use the review service to ensure that information they propose to publish or disclose does not compromise classified information or otherwise violate security.

DODD 5230.11 — Disclosure of Classified Military Information to Foreign Governments and International Organizations (December 31, 1984).

Establishes policies and procedures for the disclosure of United States classified

information to foreign governments so that the information is shared only when there is a clearly defined advantage to the United States in doing so.

DODI 5230.17 — Procedures for Disclosure of Classified Military Information to Foreign Governments and International Organizations (February 17, 1985).

Implements DODD 5230.11.

DODI 5230.18 — The DoD Foreign Disclosure and Technical Information System (FORDTIS) (November 6, 1984).

Establishes a database to control authorizations for the disclosure of classified and technical information to foreign governments.

DODI 5230.20 — Control of Foreign Representatives (June 25, 1984).

Provides guidance for controlling contacts by representatives of foreign governments with which DoD has reciprocal procurement memoranda of understanding and offset arrangements. They are afforded an opportunity to compete on a fair and equal basis with U.S. industry for DoD acquisition contracts, subject to United States law and regulations, and are given appropriate access to technical information required for such participation.

DODI 5230.21 — Protection of Classified National Security Council and Intelligence Information (March 15, 1982).

Establishes policies, procedures, and responsibilities for the protection of classified National Security Council (NSC) and intelligence information. Violation of the security requirements by DoD personnel requires strict administrative sanctions, up to and including, dismissal from employment.

DODI 5230.22 — Control of Dissemination of Intelligence Information (April 1, 1982).

Implements a system for the control and marking of intelligence information. Intelligence information is controlled in accordance with Director of Central Intelligence (DCI) policy. The instruction includes information regarding DCI policy on the release of intelligence information to contractors and consultants.

DODD 5230.24 — Distribution Statements on Technical Documents (March 18, 1987).

Requires that documents be categorized and marked prior to their primary distribution in order to denote the extent to which both classified and unclassified technical documents, including production, engineering, and logistics information, are available for distribution, release, and dissemination without additional approvals or authorizations.

DODI 5230.27 — Presentation of DoD-Related Scientific and Technical Papers at Meetings (October 6, 1987).

Provides guidance for consideration of national security concerns in the dissemination at conferences and meetings of scientific and technical information, both classified and unclassified, in the possession or under the control of DoD.

DODD 5400.4 — Provision of Information to Congress (January 30, 1978).

Provides DoD policies and procedures governing the furnishing of information, both classified and unclassified, to Congress.

DODD 5500.7 — Standards of Conduct (May 6, 1987).

DoD personnel are not to take any action which is known or believed to be in violation of U.S. laws. DoD personnel are required to be familiar with the scope of, authority for, and limitations of the activities for which they are responsible, and to acquire a working knowledge of appropriate statutory standards of conduct prohibitions and restrictions.

GOVERNMENT PROTECTION OF CONTRACTOR PROPRIETARY DATA

Part II. The following statutes and regulations govern the Government's protection of contractor proprietary data during the procurement process and provide punitive sanctions which might apply to misuse of such data in specific situations. See Part I dor additional rules which could apply when the contractor's proprietary data is also classified.

STATUTES

CRIMINAL STATUTES

18 U.S.C. § 201	Bribery, Graft and Other Violations of Public Trust. Broad prohibition against bribes and gratuities. This criminal statute would be relevant if a public official made an unauthorized releae of contractor proprietary information in return for "something of value."
18 U.S.C. § 286	Conspiracy to Defraud the Government With Respect to Claims. Prohibits entering into any agreement to defraud the US by obtaining or aiding to obtain, the payment of any false, fictitious or fraudulent claim.
18 U.S.C. § 287	False, Fictitious or Fraudulent Claims. Prohibits making or presenting a claim against the US, knowing that the claim is false, fictitious or fraudulent.
18 U.S.C. § 371	Conspiracy to Commit Offense or to Defraud United States. Prohibits any conspiracy to defraud the Federal Government.
18 U.S.C. § 641	Embezzlement and Theft: Public Money or Records. Prohibits the conversion of Government property (including records).

18 U.S.C. § 793	Gathering, Transmitting, or Losing Defense Information. Prohibits the unauthorized gathering, transmission or loss of defense information.
18 U.S.C. § 1001	False Statements or Entries Generally. Prohibits knowing and willful making of any false, fictitious, or fraudulent statement or representation in regard to a matter within the jurisdiction of any federal department or agency.
18 U.S.C. § 1341	Frauds and Swindles. Prohibits use of the mail in any way in furtherance of any scheme to defraud.
18 U.S.C. § 1343	Fraud by Wire, Radio or Television. Prohibits transmission in interstate or foreign commerce by wire, radio, or television of any information for the purpose of furthering a scheme to defraud.
18 U.S.C. § 1905	Disclosure of Confidential Information. Prohibits the unauthorized disclosure of confidential (commercial proprietary) information.

CIVIL STATUTES

5 U.S.C. § 552, as amended.	Freedom of Information Act (FOIA). Requires release of non-exempted contractor information (i.e., records) within an Executive Department or agency's control and possession.
10 U.S.C. § 130	Authority to Withhold from Public Disclosure Certain Technical Data. Authorizes the Secretary of Defense to withhold the release of certain technical data with military or space applications, in the possession of or under the control of DOD, if the data is subject to export controls.

10 U.S.C. § 2302

Definitions.

Technical data is defined as "recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) relating to supplies procured by an agency. Such term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration." [Emphasis supplied.]

10 U.S.C. § 2320, as amended.

Rights in Technical Data.

Requires DOD to develop regulations (i.e., the DFARS) to define the various proprietary interests of contractors and the Government in technical data pertaining to an item or process. In this regard, the statute specifically directs the Secretary of Defense to define the terms "developed", "exclusively at private expense," and "exclusively with Federal funds," as such determinations will ultimately control the protections and safeguards afforded the data developed under the contract, i.e., whether the Government has unlimited, Government Purpose License, or only limited rights in the subject data.

The statute also provides in relevant part that a contractor or subcontractor may "restrict the right of the United States to release or disclose technical data pertaining to the item or process, or permit the use of the technical data by such persons" when the item or process is developed "exclusively at private expense." [Empnasis supplied.] The statute permits limited disclosure of proprietary data (e.g., emergency repair and overhaul), but also notes that any such Government release or disclosure is made subject to a prohibition that the person to whom the data is released may not further release, disclose or use such data.

In "mixed funding" situations (when an item is developed in part with Federal funds and in part by private funding), the statute states that "the respective rights of the United States and the contractor or subcontractor . . . shall be established as early in the acquisition process as practicable (preferably during contract negotiations)."

10 U.S.C. § 2321, as amended.

Validation of Proprietary Data Restrictions.

This statute requires contractors or subcontractors to justify proprietary data restrictions if challenged by the contracting officer. The law mandates certain review and challenge procedures, and permits contractors and subcontractors to seek recourse under the Contract Disputes Act of 1978 (41 U.S.C. § 601 et seq.).

15 U.S.C. § 638, as amended.

Research and Development.

This statute requires certain agencies (such as DOD) to establish Small Business Innovation Research (SBIR) programs. The law mandates the protection and "retention of rights in data generated in the performance of the contract by the small business concern," but permits Government disclosure of such data under specifically defined exceptions.

EXECUTIVE ORDERS

E.O. 12591

Facilitating Access to Science and Technology (April 10, 1987).

Requires Executive departments and agencies to develop a uniform policy to permit federal contractors to retain rights to computer software, engineering drawings, and other technical data developed under Government contracts in exchange for royalty-free use by or on behalf of the Government.

E.O. 12600	Predisclosure Notification Procedures for Confidential Commercial Information (June 23, 1987).
	Requires each Executive department and agency which is subject to FOIA to provide prenotification procedures regarding the proposed release of confidential commercial information and to make existing agency procedures more uniform.
	FEDERAL ACQUISITION REGULATIONS (FAR)
FAR 5.4	Release of Information.
	Contracting officers must not release confidential/business proprietary data of offerors.
FAR 5.403	Requests from Members of Congress.
	Contracting officers must give Members of Congress detailed contract information, including confidential business proprietary data, upon request.
FAR 5.405	Exchange of Information.
	Agencies can share information (e.g., contractor data) where the same class of items is being acquired by more than one agency.
FAR 6.302-1(b)(2)	Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements.
	Existence of contractor proprietary rights can justify other than full and open competition.
FAR 7.106(b)(1)	Acquisition Planning for Additional Major System Requirements.
	The Government is authorized to purchase contractor proprietary data for competitive reprocurements.

FAR 9.105-3	Disclosure of Preaward Information. Information (e.g., confidential contractor data) obtained during preaward surveys shall not be disclosed unless releasable under FOIA.
FAR 9.505-2(a)(i)	Preparing Specifications for Work Statements. Prohibits organizational conflicts of interest in relation to the preparation of statements of work by proprietary data owners.
FAR 9.505-4	Obtaining Access to Proprietary Information. Contractors that gain access to proprietary data of other companies must protect such data from unauthorized use or disclosure.
FAR 14.211	Release of Acquisition Information. Contracting officers are not to disclose any information (e.g., confidential business proprietary data) during post-solicitation discussions which, alone or together, could afford an unfair advantage to a prospective bidder.
FAR 14.401	Receipt and Safeguarding of Bids. All bids (including modifications) received before the time set for bid opening must be secured and safeguarded to prevent unauthorized disclosure.
FAR 14.404-4	Restrictions on Disclosure of Descriptive Literature. When a bid is accompanied by descriptive literature, and the bidder imposes a restriction that prevents disclosure of of such literature, the restriction may render the bid non-responsive.

FAR 14.503(c)

Two-Step Sealed Bidding Procedures--Step One.

Contracting Officers are to safeguard proposals (after receipt) against disclosure to unauthorized individuals. Contractors are allowed to place restrictions on the use and disclosure of contractor proprietary data, and contracting officers are to accept and handle such data IAW established procedures.

FAR 15.411

Receipt of Proposals and Quotations.

The receipt and handling procedures for contractor proposals and quotations in negotiated procurements should be similiar to the bid receipt and safeguarding procedures for sealed bidding; after receipt, proposals and quotations must be safeguarded from unauthorized disclosure.

FAR 15.413(a)

Disclosure and Use of Information Before Award (Solicited Proposals).

After receipt of proposals and prior to award, information contained in the the proposals shall not be provided to the public or anyone else in the Government without a legitimate interest.

FAR 15.413(b)

During the preaward or preacceptance period, only the contracting officer, the contracting officer's superiors with contractual authority, or other specifically authorized personnel, shall transmit technical or other information and conduct discussions with prospective contractors. No information will be furnished to a prospective contractor when, if alone or together with other information, it would afford that contractor with an unfair advantage over other bidders.

FAR 15.413(c)	Prospective bidders can place restrictions on data and its use in proposals and quotes, and contracting officers are not to exclude any such proposals from evaluation or be prejudiced by these restrictions. The portions of the proposal which are so restricted (except when similiar information is obtained from another source without restriction) shall be used only for evaluation and shall not be disclosed outside the Government without permission of the prospective contractor absent FOIA requirements.
FAR 15.504	Unsolicited Proposals: Advance Guidance. Unsolicited proposals which contain contractor proprietary information must be marked and identified with restrictive legends that conform to the requirements of FAR 15.509.
FAR 15.508	Unsolicited Proposal Prohibitions. Government personnel shall not disclose restrictively marked information included in an unsolicited proposal; moreover, any such unauthorized disclosure could result in criminal prosecution under 18 U.S.C. § 1905.
FAR 15.509	Limited Use of Data (Unsolicited Proposals). Proprietary data in unsolicited proposals must be properly marked and identified with a restrictive rights legend as provided in this sub-part; any failure to comply with this requirement will result in the return of the proposal. Non-governmental evaluations of unsolicited proposals will be conducted subject to the terms and conditions of the restrictive rights legend.

FAR 15.610(d)

Written or Oral Discussions.

When discussions are held, they must be held with all responsible offerors in the competitive range; the contracting officer must not engage in: 1.) technical leveling [helping an offeror bring his proposal up to the level of others]; 2.) technical transfusion [disclosure of information from another proposal which improves a competing proposal]; or 3.) auctioning [disclosing the cost or price which an offeror must meet to be considered for award or advising an offeror of his price standing in relation to another offeror, or otherwise furnishing information about other offerors' prices].

FAR 15.612

Formal Source Selection.

Agencies must exercise particular care to protect source selection information (which often includes contractor proprietary information) on a strict need-to-know basis; during the source selection process, information can only be released with the approval of the source selection authority and Government employees are not to contact prospective contractors with regard to their proposals without prior approval from the source selection authority.

FAR 15.1001(c)(v)

Notifications to Unsuccessful Offerors.

During notifications to unsuccessful offerors, in no event shall an offeror's trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

FAR 15.1003

Debriefing of Unsuccessful Offerors.

When a contract is awarded on a basis other than price alone, unsuccessful offerors, upon their written request, shall be debriefed and furnished the basis for the selection decision and contract award.

Debriefing information shall include the Government's evaluation of the significant weak or deficient factors in the proposal; however, point-by-point comparisons with other offerors' proposals shall not be made. Debriefings shall not reveal the relative merits or technical standing of competitors or the evaluation scoring. Moreover, debriefing shall not reveal any information that is not releasable under the Freedom of Information Act; for example —

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques; or,

(3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information.

FAR 17.403(b)

Leader-Follower Contracting Procedures.

In leader-follower acquisitions, the contracting officer shall ensure that any contract awarded under the arrangement contains a firm agreement regarding disclosure, if any, of contractor trade secrets, technical designs or concepts, and specific data, or software, of a proprietary nature.

FAR Part 24

Protection of Privacy and Freedom of Information.

This part prescribes the polcies and procedures that apply the Privacy Act of 1974 (5 U.S.C. § 552(a)) and OMB Circular No. 108 to the disclosure of Government contract information and cites the Freedom of Information Act (5 U.S.C. § 552, as amended).

FAR 24.202

FOIA Policy.

Bona fide trade secrets and qualifying confidential commercial or financial information are not releasable under FOIA.

FAR Part 27

Patents, Data and Copyrights.

This part prescribes policies, procedures, and contract clauses pertaining to patents and directs agencies to develop coverage for rights in data and copyrights. (DFARS Subpart 227.4, discussed infra, specifically addresses DOD policies on the protection of contractor proprietary technical data, other data, computer software and copyrights.)

FAR 30.201-4

Privileged and Confidential Information in Disclosure Statements.

On CAS-covered contracts, if the offeror or contractor notifies the contracting officer that his Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside the Government.

FAR 35.011

Research and Development Data.

In planning a developmental program when subsequent production contracts are contemplated, the Government should consider the need and time required to obtain a complete technical package (plans, drawings, specifications and other descriptive information) that can be used to achieve competition in production contracts.

FAR Part 52

Solicitation Provisions and Contract Clauses.

This part provides numerous FAR-prescribed solicitation provisions and contract clauses, and includes several terms and conditions regarding the protection of contractor proprietary data; this part is more specifically supplemented by the DFARS (an analysis of which follows directly).

FAR 52.215-12

Restriction on Disclosure and Use of Data.

This provision is inserted in requests for proposals and requests for quotations to inform potential offerors that they must mark and identify any restricted data that they do not want disclosed. It also advises offerors of the terms and conditions of any subsequent Government use of this data.

FAR 52.230-5

Disclosure and Consistency of Cost Accounting Standards.

This clause provides in relevant part that a contractor's Disclosure Statement will be protected and not released outside the Government if it contains trade secrets and commerical or financial information which is privileged and confidential.

DOD FAR SUPPLEMENT (DFARS)

New Interim DFARS changes in relation to Patents, Data and Copyrights (Subparts 227.4 and 252.227, 53 F.R. 10780) were published on April 1, 1988 and became effective for all solicitations issued on or after April 2, 1988; new Interim DFARS changes in relation to Computer Software (Subparts 227.481 through 227.481-2 and 252.227-7013, 53 F.R. 20632) were published on June 6, 1988, but were effective as of April 2, 1988.

(The software coverage was inadvertantly omitted from the April Interim DFARS technical data changes, and is merely a reprint of existing coverage on on software rights.) See generally Defense Acquisition Circular (DAC) 86-13 (April 15, 1988).

DFARS Part 227.4

Technical Data, Other Data, Computer Software, and Copyrights.

This subpart basically sets forth DOD policies and procedures relating to the acquisition and protection of certain contractor technical data and computer software, as well as relevant rights in technical data, other data, computer software and copyrights. It does not apply, however, to computer software acquired under GSA schedule contracts.

DFARS Part 252

Solicitation Provisions and Contract Clauses.

This subpart of the DOD FAR Supplement provides numerous DOD-unique solicitation provisions and contract clauses, and includes several specific provisions and clauses in relation to the protection of contractor proprietary data.

DFARS 252.217-7207

Rights in Technical Data and Computer Software (Prescribes use of DFARS Clause 252.227-7013 in job orders awarded under the Master Agreement for Repair and Alteration of Vessels, as applicable, IAW DFARS 217.7104(b)).

DFARS 252.227-7013 (which is almost 8 pages in length) is the basic DOD data rights clause which is inserted in all solicitations and contracts (with only a few exceptions) when technical data is specified as a deliverable or when computer software is originated, developed or delivered. The clause details and outlines the different contractor/Government rights and protections afforded technical data and computer software.

Contractor data rights are basically divided into three categories: 1.) Unlimited Rights; 2.) Government Purpose License Rights; and 3.) Limited Rights. Relevant computer software rights are divided into two categories: Restricted Rights and Unlimited Rights. This pivotal clause then details the protections and safeguards which are afforded to both Limited and Restricted Rights for contractor computer software.

DFARS 252.217-7265

Restrictive Markings on Technical Data. (Prescribes use of DFARS Clause 252.227-7018 in job orders awarded under the Master Agreement for Repair and Alteration of Vessels, as applicable, IAW DFARS 217.7104(b)).

DFARS 252.227-7018 requires contractors and qualifying subcontractors to implement verification procedures to insure that restrictive rights markings are used only when authorized and to establish a functional quality assurance system to insure compliance with the clause. One of the ostensible purposes of this section is to limit the amount of restricted rights data which the Government must protect and safeguard from unauthorized disclosure.

DFARS 252.217-7266

Identification of Technical Data. (Prescribes use of DFARS Clause 252.227-7029, as applicable, in job orders awarded under the Master Agreement for Repair and Alteration of Vessels IAW DFARS 217.7104(b)).

DFARS 252.227-7029 requires contractors to mark technical data delivered under a contract with the number of the contract, name of the Contractor, and name of any subcontractor who generated the data. This requirement will assist the Government in the discharge of its data protection responsibilities.

DFARS 252.217-7267

Data Requirements. (Prescribes use of DFARS Clause 252.227-7031, as applicable, in job orders awarded under the Master Agreement for Repair and Alteration of Vessels IAW DFARS 217.7104(b)).

DFARS 252.227-7031 requires contractors to deliver the data items listed on the Contract Data Requirements List (CDRL), plus any other deliverable data items under the contract which should be properly marked if the contractor is claiming limited or restrictive rights, i.e., the Government must know what the contractor is claiming as proprietary in order to protect it from unauthorized disclosure.

DFARS 252.227-7013

Rights in Technical Data and Computer Software. (As prescribed by DFARS 227.482(a)(1) for use in all solicitations and contracts, as applicable).

This is the standard DOD data rights clause as previously discussed in DFARS 252.7207 (Rights in Technical Data and Computer Software) which is used to define relative rights and protections for technical data and computer software.

DFARS 252.227-7017

Rights in Technical Data -- Major System and Subsystem Contracts. (As prescribed by DFARS 227.482(c) for use in all solicitations and contracts, as applicable, IAW DFARS 227.473-2(b)).

This clause was recently deleted IAW DAC 86-13 (April 15, 1988).

DFARS 252.227-7018

Restrictive Markings on Technical Data. (As prescribed by DFARS 227.482(d) for use in all solicitations and contracts, as applicable, IAW DFARS 227.473-4(b)).

This is the same clause which was briefed previously in DFARS 252.217-7265 (Restrictive Markings on Technical

Data) regarding the contractor's responsibility for marking and identifying proprietary data.

DFARS 252.227-7019

Identification of Restricted Rights Computer Software. (As prescribed by DFARS 227.482(e) for use in all solicitations and contracts, as applicable, IAW DFARS 227.481).

This important provision requires contractors to identify any restrictions on the Government concerning the use or disclosure of computer software which was developed at private expense and delivered under the contract. Any such restrictions must be set forth in an agreement which is to be part of the contract, either negotiated prior to award or included in a modification of the contract before such delivery. Contractors are advised that if they fail to comply with these procedures, the Government will assume that all deliverable computer software will be subject to unlimited rights.

DFARS 252.227-7020

Rights in Data -- Special Works. (As prescribed by DFARS 227.482(f) for use in all solicitation and contracts, as applicable, IAW DFARS 227.476).

This clause provides that the Government shall own all the rights for defined first works produced in the performance of a contract, and that the Government shall have a nonexclusive, paid-up license in works owned by the contractor or others which are prepared or delivered under the contract.

DFARS 252.227-7021

Rights in Data -- Existing Works. (As prescribed by DFARS 227.482(g) for use in all solicitations and contracts, as applicable, IAW DFARS 227.477).

The Government shall have a paid-up, non-exclusive license in defined existing works delivered under the contract.

DFARS 252.227-7022

Government Rights (Unlimited). (As prescribed by DFARS 227.482(h) for use in all solicitations and contracts, as applicable, IAW DFARS 227.478-2(a)(1)(i)).

This clause/provision provides that the Government shall have unlimited rights in all drawings, designs, specifications, notes and other works prepared under the contract, and a paid-up license in any contractor owned/claimed works based on rights under design patent or copyright laws.

DFARS 252.227-7023

Drawings and Other Data to Become Property of Government. (As prescribed by DFARS 227.482(i) for use in all solicitations and contracts, as applicable, IAW DFARS 227.278-2(a)(1)(ii)).

This clause/provision provides that the Government shall be the sole owner of any and all designs, drawings, specifications, notes and other works developed during the course of a contract.

DFARS 252.227-7024

Notice and Approval of Restricted Designs. (As prescribed by DFARS 227.482(j) for use in all solicitations and contracts, as applicable, IAW DFARS 227.478-5).

This clause/provision requires contractors to make maximum use of structures, machines, products, materials, construction methods and equipment which are readily available through Government or competitive commercial channels or through standard or proven production techniques, methods and processes. Absent CO approval, contractors are not to produce a restricted design or specification which requires structures, products, materials, construction equipment, etc., that the contractor knows will be sole source (i.e., commercial proprietary).

DFARS 252.227-7025

Rights in Technical Data and Computer Software (Small Business Innovation Research Program). (As prescribed in DFARS 252.227-482(k) for use in all solicitations and contracts, as applicable, IAW DFARS 227.479).

This clause was recently deleted IAW DAC 86-13 (April 15, 1988).

DFARS 252.227-7026

Deferred Delivery of Technical Data or Computer Software. (As prescribed in DFARS 252.227-482(l) for use in all solicitations and contracts, as applicable, IAW DFARS 227.475-2(b)).

The Government has the right to require the contractor to deliver any contract-related data or computer software generated during contract performance (in addition to those items specified elsewhere) — at any time during contract performance or within three years after acceptance of all items or or termination of the contract.

FARS 252.227-7027

Deferred Ordering of Technical Data or Computer Software. (As prescribed in DFARS 252.227-482(m) for use in all solicitations and contracts, as applicable, IAW DFARS 227.475-2(c)).

The Government has the right to order any contract-related technical data or computer software previously identified as "deferred delivery" items — at any time during contract performance or within two years after acceptance of all items or termination of the contract.

DFARS 252.227-7029

Identification of Technical Data. (As prescribed by DFARS 227.482(o) for use in all solicitation and contracts, as applicable, IAW DFARS 227.473-4).

This is the same clause which was discussed previously in DFARS 252. 217-7266 (Identification of Technical Data).

95-941 O - 89 - 8

DFARS 252.227-7030

Technical Data -- Withholding or Payment. (As prescribed in DFARS 252.227-482(p) for use in all solicitations and and contracts, as applicable, IAW DFARS 227.475-3).

This clause authorizes the CO to withhold payments for failure to submit required data in a timely manner or placing non-conforming restrictive proprietary markings on the data.

DFARS 252.227.7031

Data Requirements. (As prescribed by DFARS 227.482(q) for use in all solicitand contracts, as applicable, IAW DFARS 227.475-1).

This is the same clause which was briefed previously in DFARS 252.217-7267 (Data Requirements).

DFARS 252.227-7032

Rights in Technical Data and Computer Software (Foreign). (As prescribed by DFARS 227.482(r) for use in all solicitations and contracts, as applicalbe, IAW DFARS 227.475-6).

For mutual defense purposes, the Government is permitted to duplicate, use and disclose to foreign governments all technical data (including all reports, drawings, blueprints, and computer software) delivered by the contractor to the Government.

DFARS 252.227-7033

Rights in Shop Drawings. (As prescribed by DFARS 227.482(s) for use in all solicitations and contracts, as applicable, IAW DFARS 227.478-2(a)(2)).

This provision allows the Government to duplicate, use and disclose shop drawings delivered under contract.

DFARS 252.227-7035

Preaward Notification of Rights in Technical Data and Computer Software. (As prescribed by DFARS 227.482(t) for use in all solicitations and contracts, as applicable, IAW DFARS 227.473-1).

This provision requires all offerors to identify to the maximum extent possible, all limited rights, Government Purpose License Rights, and undetermined rights in order for the Government to make informed judgments concerning the competitive reprocurement of potential items, components, processes or computer software.

DEPARTMENT OF DEFENSE DIRECTIVES (DODD) AND INSTRUCTIONS (DODI)

DODD 4100.33 — Commercial Activities Program Procedures (September 9, 1985).

This directive provides that whenever the Government is considering contracting out a commercial activity, the Govment's estimated cost of performance must be sealed and not released to contractors until after bid opening.

DODD 4105.62 — Selection of Contractual Sources for Major Defense Systems (September 9, 1985).

This directive provides that confidential commercial and financial data must be handled with the utmost discretion during source selection, and that the Freedom of Information Act (discussed previously) must be carefully considered with regard to any public disclosure of any confidential commercial and financial data. It also states that Government officials should not engage in either technical leveling or technical transfusion as prescribed by the FAR.

DODD 5010.2 — DOD Data Management Program (December 5, 1968).

This directive, which is currently in revision, defines the major DOD policies in relation to data rights management.

DODD 5200.21

Dissemination of DOD Technical Information (September 27, 1979).

Establishes a DOD Technical Information Program to ensure the complete and timely exchange among DOD technical activities of all technical information. It also establishes certification procedures for controlling access to DOD information by certified contractor and DOD personnel.

DODD 5230.9

Clearance of DOD Information for Public Release (April 2, 1982).

Establishes policies and procedures, and assigns responsibilities, for the review and clearance of information proposed for publication or public release by DOD personnel.

DODD 5230.24

Distribution Statements on Technical Documents (March 18, 1987).

Requires the categorization and marking of documents prior to their primary distribution in order to denote the extent to which both classified and and unclassified technical documents, (including production, engineering and logistics information) are available for distribution, release and dissemination without additional approvals and authorizations.

DODD 5230.25

Withholding of Unclassified Technical Data from Public Disclosure (November 6, 1984).

This directive implements 10 U.S.C. § 130(c), and provides a FOIA exemption 3 basis for denying the release of any technical data which: 1.) is in the possession or under the control of the DOD; 2.) with military or space applications; 3.) which may not be exported lawfully without an approval, authorization or license under U.S. export control laws; and 4.) which could disclose critical technology.

DODD 5400.4 — Provision of Information to Congress (January 30, 1978).

Provides DOD policies and procedures for furnishing information, both classified and unclassified, to Congress.

DODD 5500.7 — Standards of Conduct (May 6, 1987).

DOD personnel are not to take any action known or believed to be in violation of US law. Moreover, personnel must be familiar with the scope of, authority for, and limitations of the activities for which they are responsible and they must acquire a working knowledge of appropriate standard of conduct prohibitions and restrictions.

GOVERNMENT PROTECTION OF PROCUREMENT SENSITIVE DATA

Part III. The Government must safeguard certain "procurement sensitive" contractor and Government source selection information in order to protect the integrity of the procurement process. Procurement sensitive data includes, for example, non-proprietary contractor proposals which, if disclosed, could result in a competitive advantage for other contractors.

Government evaluation plans are also considered procurement sensitive. For example, when only some, but not all, bidders have access to Government evaluation documents, contractors that gain unfair, inside information can exploit it to the detriment of other potential competitors and the Government.

Part III of this compendium will address the principal legal and regulatory controls which relate to DOD protection of procurement sensitive information with regard to: non-proprietary contractor proposals (Section A); and Government evaluation plans (Section B). Included are the criminal sanctions which might be applicable under various fact situations.

A. PROTECTION OF NON-PROPRIETARY CONTRACTOR PROPOSALS

STATUTES

Non-Proprietary Contractor Proposals. Although there are no statutes which refer specifically to the protection of procurement sensitive, but non-proprietary, information, the following statutes govern the release of any such information and possible criminal sanctions applicable to wrongful use of such information::

5 U.S.C. § 552 Freedom of Information Act.

Provides nominal protection to non-proprietary, contractor-supplied information (particularly after contract award), if the contractor whose non-proprietary information is the object of the request was awarded the contract.

10 U.S.C. § 2328 Release of Technical Data.

Requires the Secretary of Defense to promulgate regulations specifying a uniform fee schedule for the costs associated with searching, duplicating and reviewing releasable technical data under the Freedom of Information Act.

18 U.S.C. § 286 Conspiracy to Defraud the Government With Respect to Claims.

Provides for the punishment of anyone who enters into an agreement to defraud the United States by obtaining, or aiding to obtain, the payment of any false, fictitious or fraudulent claim.

18 U.S.C. § 287 False, Fictitious or Fraudulent Claims.

Provides for the criminal punishment of anyone who makes or presents a claim against the United States, knowing that the claim is false, fictitious or fraudulent.

18 U.S.C. § 371 Conspiracy to Commit Offense or to Defraud the United States.

Provides for the criminal punishment of anyone who conspires with another person to defraud the United States.

18 U.S.C. § 1001 False Statements or Entries Generally.
Provides for the criminal punishment of anyone who knowingly and willfully makes any false, fictitious or fraudulent statement or representation in regard to a matter within the jurisdiction of any federal department or agency.

18 U.S.C. § 1341 Frauds and Swindles.

Provides for the criminal punishment of anyone who uses the mail in any way in furtherance of any scheme to defraud.

18 U.S.C. § 1343 Fraud by Wire, Radio or Television.

Provides for the criminal punishment of anyone who transmits in interstate or foreign commerce by wire, radio, or television any information furthering a scheme to defraud.

EXECUTIVE ORDERS

E.O. 11222 — Prescribing Standards of Ethical Conduct for Government Officers and Employees (May 8, 1965).

Establishes bedrock standards of conduct for Government employees, including a prohibition against a Government employee either, directly or indirectly, making use of, or permitting others to make use of, official information which is not available to the general public, to further private interests.

OFFICE OF FEDERAL PROCUREMENT POLICY (OFPP) GUIDANCE

Policy Ltr. 78-3 — Requests for Disclosure of Contractor-Supplied Information Obtained in the Course of a Procurement (March 30, 1978).

Interprets exemption 4 of the Freedom of Information Act (FOIA), which permits the withholding of trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Upon receipt of a FOIA request by a contractor or potential contractor for information that appears to fall within FOIA exemption 4, agencies are to: 1.) immediately notify the firm which submitted the information of the subject request, and provide the submitter with an opportunity to present its views on whether the information should be released to the requestor; and 2.) give careful consideration to: a.) the fact that commercial and financial information is often submitted voluntarily, and its public disclosure could result in the submission of less information in the future; and b.) the context in which such information was submitted (i.e., the potential for competitive harm).

FEDERAL ACQUISITION REGULATION (FAR) PROVISIONS

A number of regulations, although not directly addressing the disclosure of procurement sensitive, contractor-supplied information, nevertheless, do increase the level of "custodial" care which such information receives from the Government. These

regulations, by prohibiting the use of any information in a manner that would adversely affect the integrity of the procurement process, are designed to discourage those with access to procurement sensitive information from abusing their access for personal gain.

FAR 3.1 Safeguards.

Requires the Government to conduct its business with complete impartiality and to avoid preferential treatment. Even the appearance of a conflict of interest in Government-contractor relationships must be avoided.

FAR 3.2 Contractor Gratuities to Government Personnel.

Bars gratuities from contractors to Government personnel. (This prohibition would also prohibit bribes to a Government employee in order to obtain information for a contractor.)

FAR 3.3 Reports of Suspected Antitrust Violations.

Requires agency personnel to report evidence of suspected antitrust violations in acquisitions, including collusive bidding, follow-the-leader pricing, rotated low bids, collusive price estimating systems and business sharing. (This is to discourage contractors from providing other, selected contractors with information that should be kept confidential.)

FAR 3.4 Contingent Fees.

Makes the statutory requirement which prescribes that all negotiated contracts must contain a warranty by the contractor against contingent fees (for soliciting or obtaining a Government contract) also applicable to sealed bid contracts. The fact that a fee is for information does not exclude it from the definition of a contingent fee. Contingent fee arrangements are considered contrary to public policy because they may lead to the exercise of improper influence.

FAR 3.5 Other Improper Business Practices.

Requires contracting officers to guard against other improper business practices such as contractor recovery of "buying-in" costs through the pricing of change orders or follow-on contracts subject to cost analysis. It also implements procedures for handling suspected kickbacks (payments from sub-contractors to contractors for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract).

FAR 3.6 Contracts with Government Employees or Organizations Owned or Controlled by Them.

Prohibits contracting officers from knowingly awarding a contract to a Government employee or to a business concern or other organization owned, or substantially owned or controlled, by one or more Government employees.

FAR 3.7 Voiding and Rescinding Contracts.

Provides policies and procedures for voiding and rescinding contracts, in relation to which there has been a final conviction for bribery, conflict of interest or similar misconduct, and for recovering amounts expended and property transferred.

Other regulations (such as those that follo focus more on the manner in which information is obtained from contractors and the Government's subsequent handling of this information.

FAR 5.1 Dissemination of Information.

Requires the dissemination of information regarding proposed contract actions in ways that are designed to increase competition and broaden industry and small business participation, as well as fostering other socio-economic concerns.

FAR 5.4 — Release of Information.

Requires contracting officers to maintain a high level of business security in order to preserve the integrity of the acquisition process. When information is received from contractors or others outside Government, it should not be publicized or discussed with potential contractors by any Government personnel who participate, directly or indirectly, in any stage of the acquisition cycle. This category of protected information includes information on plans that would provide an undue or discriminatory advantage to others based on information received in confidence from an offeror.

FAR 5.403 — Requests from Members of Congress.

Members of Congress are entitled to detailed information regarding any Government contract upon request. However, if acceding to the request could result in disclosing business confidential information or information which could prejudice a competitive acquisition, the contracting officer must refer the proposed reply to the agency head.

FAR 6.1 — Full and Open Competition.

Requires use of sealed bids to meet the requirement for full and open competition. Other procedures, such as competitive proposals, may be used only if sealed bidding is inappropriate. (Sealed bidding offers the most protection for contractor-submitted data.)

FAR 6.2 — Full and Open Competition After Exclusion of Sources.

Requires agencies to use full and open competition even if some sources are excluded.

FAR 6.3 — Other Than Full and Open Competition.

Permits other than full and open competition when a source of supplies or services has submitted an unsolicited research proposal that

demonstrates a unique and innovative concept, the substance of which: 1.) is not otherwise available to the Government; and 2.) does not resemble the substance of a pending competitive acquisition.

FAR 6.502 — Duties and Responsibilities (of Agency Competition Advocates).

Requires agency competition advocates to take necessary steps to promote full and open competition.

FAR 7.1 — Acquisition Plans.

Requires use of acquisition planning in order to fill agency needs in a timely manner and at reasonable costs, including the use of full and open competition.

FAR 7.304(d) — Procedures (for A-76 Contracting Out).

Requires confidentiality of the Government's performance cost estimate and cost comparisons until bid opening to ensure they are completely independent.

FAR 9.105-3 — Disclosure of Preaward Information.

Limits disclosure of contractor information acquired for the purpose of determining the responsibility of prospective contractors, including preaward survey reports.

FAR 9.5 — Organizational Conflicts of Interest.

Requires use of a restrictive clause whenever the nature of the work to be performed under a proposed Government contract may, without some restriction on future activities: 1.) result in an unfair competitive advantage to the contractor; or 2.) impair the contractor's objectivity in performing the contract work.

FAR 14.211 Release of Acquisition Information.

Restricts the presolicitation release outside the Government of acquisition information to presolicitation notices, long-range acquisition estimates and synopses in accordance with regulations. Within the Government, this information is restricted to those with a legitimate interest. When information is released, it is provided to all prospective bidders as close in time as possible so that no one bidder is afforded an unfair advantage over another.

Only a limited number of Government personnel have authority, after the release of a solicitation, to transmit technical or other information in discussions with prospective bidders. Information which alone, or together with other information, could provide a competitive advantage cannot be released to a prospective bidder.

FAR 14.401 Receipt and Safeguarding of Bids.

All bids received before the time prescribed for bid opening must be secured. Only Government employees are permitted to know the number of bids and the identities of the bidders, and even then, only on a need-to-know basis.

FAR 14.411 Receipt of Proposals and Quotations.

Requires procedures for the receipt of proposals which are similar to those for the receipt of sealed bids. Proposals or quotations must be safeguarded from unauthorized disclosure.

FAR 15.413 Disclosure and Use of Information Before Award.

Prohibits (after receipt of proposals) disclosure of information contained in the proposals, or the number or identity of offerors, to the public, or anyone in the Government without a legitimate interest.

In order to guard against furnishing contractors with information which could provide them with a competitive advantage, only a limited number of Government personnel have authority to release information during the preaward or preacceptance period of a negotiated acquisition. Restrictive legends on contractor proposals are often required to protect contractor data to the extent permitted by law.

Proposals cannot be released outside the Government for evaluation purposes without the written agreement of the evaluator that information contained in the proposal will be used only for evaluation purposes and that no further release is authorized.

FAR 15.6 — Source Selection.

Prohibits technical leveling, technical transfusion and auction techniques through discussions with offerors. Source selection data may not be released during the selection process without the approval of the source selection authority. Government personnel may not contact or visit a contractor regarding a proposal under source selection evaluation without the prior approval of the source selection authority.

FAR 15.1001 — Notifications to Unsuccessful Offerors.

Prohibits the disclosure of any offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential information in notices to unsuccessful offerors.

FAR Part 24 — Protection of Privacy and Freedom of Information.

Advises contracting officers to comply with agency regulations and to obtain guidance from agency officials with Freedom of Information Act responsibilities before releasing requested contract records.

FAR 30.2 — Disclosure Requirements.

Requires any business unit which receives a Cost Accounting Standards-covered negotiated national defense contract or subcontract of $10 million or more to submit a Disclosure Statement before award. A Disclosure Statement is a written description of a contractor's cost accounting practices and procedures. If an offeror or contractor notifies the contracting officer that the Disclosure Statement contains trade secrets and commercial or financial information, which is privileged and confidential, the Disclosure Statement must not be released outside the Government.

FAR 37.105 — Competition in Service Contracting.

Requires the award of service contracts by sealed bidding whenever conditions are appropriate.

FAR 52.203-1 — Officials Not to Benefit.

This clause prohibits members of Congress from sharing in any part of a Government contract.

FAR 52.203-2 — Certificate of Independent Price Determination.

Requires offerors to certify that they have not engaged in collusive bidding.

FAR 52.203-3 — Gratuities.

Reserves the Government's right to terminate a contract if the contractor intentionally provides a gratuity to a Government employee for the purpose of receiving favorable treatment under a contract.

FAR 52.203-4 — Contingent Fee Representation and Agreement.

Requires contractors to provide information regarding the use of any person retained to solicit or obtain the contract.

FAR 52.203-5 Covenant Against Contingent Fees.

Clause under which contractor warrants that no person has been retained to obtain the contract for a contingent fee (except a bona fide agency or employee). An agency that either exerts or proposes to exert improper influence to obtain Government contracts is not a bona fide agency. Improper influence is any influence that induces a Government employee to act in relation to a Government contract on any basis other than the merits of the matter.

FAR 52.207-1 Notice of Cost Comparison (Sealed-Bid).

Clause which advises offerors for commercial activities contracts that the Government's estimate of cost of performance will be prepared without access to offerors' bids.

FAR 52.207-2 Notice of Cost Comparison (Negotiated).

Clause which advises offerors that when a commercial activity is procured by negotiation, the Government's cost estimate will be sealed before the time set for receipt of initial proposals so that the Government will not have unfair access to contractor plans or proposals.

FAR 52.214-10 Contract Award - Sealed Bidding.

Clause which assures contractors that the Government will evaluate bids without discussions. (The elimination of discussions arguably affords greater protection to contractor-submitted information.)

FAR 52.215-12 Restriction on Disclosure and Use of Data.

Provides a restrictive legend for use by offerors or quoters if they have included data in their proposals or quotations which they do not want disclosed except for Government evaluation purposes.

DOD SUPPLEMENT TO THE FAR (DFARS) PROVISIONS

DFARS Part 3 — Improper Business Practices and Personal Conflicts of Interest.

Requires reports of suspected criminal conduct, noncompetitive practices, kickbacks, and other procurement irregularities in accordance with specified procedures.

DFARS 7.1 — Acquisition Plans.

Requires the equitable structuring of solicitations and contracts to distribute technical, financial and economic or business risks, consistent with, among other things, salient business and legal constraints. All personnel working on an acquisition must be aware of their responsibilities.

DFARS 15.6 — Source Selection.

Outlines an alternative "Four-Step" source selection procedure that is designed to reduce discussions and preclude the use of auctioning techniques. The majority of discussions, under this procedure, are held in the pre-solicitation period or in pre-proposal conferences. Final negotiations are held only with the selected offeror.

B. PROTECTION OF GOVERNMENT EVALUATION PLANS

Government Evaluation Plans. There are no statutes, Executive Orders or policy statements concerning the protection of Government evaluation plans and cost estimates per se. Nevertheless, statutes such as 18 U.S.C. § 286 (conspiracy to defraud the Government with respect to claims), 18 U.S.C. § 287 (false, fictitious or fraudulent claims), 18 U.S.C. § 371 (conspiracy to commit an offense or to defraud the United States), 18 U.S.C. § 641 (conversion of government property, including records), 18 U.S.C. § 793 (gathering, transmitting, or losing defense information), 18 U.S.C. § 1001 (false, fictitious or fraudulent statements generally), 18 U.S.C. § 1341 (frauds and swindles using the mails),and 18 U.S.C. § 1343 (fraud by wire, radio or television) may be applicable in cases of improper release, acquisition, or use of such information, as is Executive Order 11222, which outlines the minimum standards of conduct for

Federal employees. Procurement regulations also recognize the need to safeguard Government evaluation plans in order to maintain the integrity of the procurement process.

FEDERAL ACQUISITION REGULATION (FAR) PROVISIONS

FAR 7.3 — Contractor Versus Government Performance.

Provides for secrecy of the Government's estimated cost of performance in relation to a commercial activity which is undergoing a "contracting out" evaluation.

FAR 9.500 — Organizational Conflicts of Interest.

Restricts future contracts with contractors who have assisted in preparing, or who had special access to, Government planning estimates, if such access would give them an unfair advantage in relation to future competitive acquisitions.

FAR 10.002 — Policy (Regarding Specifications).

Requires agencies to specify their needs in manners which are designed to promote full and open competition. Descriptions of agency requirements must, whenever practicable, be stated in terms of performance functions or end-performance required.

FAR 14.205-5 — Release of Solicitation Mailing Lists.

Requires contracting activities to make central and local solicitation mailing lists available to the public in response to written requests.

FAR 14.211 — Release of Acquisition Information.

Prohibits the release of information outside the Government regarding a proposed acquisition before solicitation except for presolicitation notices, long-range acquisition estimates or synopses. Within the Government, such information is restricted to those who have a legitimate interest. Release to prospective bidders should be accomplished as closely in time as possible.

FAR 15.605 — Evaluation Factors (Source Selection).

Requires solicitations to state clearly the evaluation factors that will be considered in making a source selection and their relative importance. However, the Government need not disclose the numerical weights which may be employed in the evaluation of proposals.

FAR 15.612(e) — Formal Source Selection.

Requires agencies to protect source selection information on a strict need-to-know basis. Source selection data may not be released during a solicitation without the approval of the source selection authority.

FAR 15.803 — General (Price Negotiation).

Prohibits Government personnel from disclosing to an offeror or contractor any conclusions, recommendations or portions of administrative contracting officer or auditor reports regarding an offeror's or contractor's proposal, without the concurrence of the contracting officer responsible for the negotiation.

FAR 35.007 — Solicitations (for Research and Development Contracts).

Permits the initial distribution of solicitations for research and development contracts to only those sources which are technically qualified to perform research or development in the specific field of science or technology involved.

FAR 36.203 — Government Estimate of Construction Costs.

Provides that access to an independent Government estimate of construction costs shall be limited to Government personnel whose official duties require knowledge of the estimate.

FAR 36.211 — Distribution of Advance Notices and Solicitations (Construction Contracts).

Recommends advance distribution of notices and solicitations for construction contracts in order to reach as many prospective offerors as practicable.

FAR 36.605 — Government Cost Estimate for Architect-Engineer Work.

Knowledge of the Government's independent cost estimate for architect-engineer services should be limited to only those Government personnel whose official duties require knowledge of the estimate. However, this rule would not apply in situations where a contracting officer identifies a specialized task during contract negotiations, and subsequently discloses the associated cost breakdown in the Government's estimate in order to arrive at a fair and reasonable price.

FAR 52.214-6 — Explanation to Prospective Bidders.

Advises bidders that any questions regarding the solicitation must be in writing and to allow time for a written response that will be sent to all prospective bidders. Oral responses are not binding. (This clause is designed to ensure that all prospective bidders are operating under the same assumptions and instructions.)

DEPARTMENT OF DEFENSE DIRECTIVES (DODD) AND INSTRUCTIONS (DODI)

DODI 4100.33 — Commercial Activities Program Procedures (August 12, 1985).

Provides that, whenever the Government is considering contracting out a commercial activity, the Government's estimated cost of performance must be sealed, and that it will not be provided to contractors until after the opening of contractor bids.

DOD 5000.3-M-1 Test and Evaluation Master Plan (TEMP) Guidelines (October 1986).

Distribution statements must be used on the cover page of Test and Evaluation Master Plans in accordance with DODD 5230.24 (Distribution Statements on Technical Documents).

DODD 5400.4 Provision of Information to Congress (January 30, 1978).

DOD activities are required, when answering constituents' letters to members of Congress, to observe the restrictions on offical information which, in the best interests of the public as a whole, should not be given general circulation. (This would apply to Government evaluation plans and cost estimates.)

DODD 5400.7 DOD Freedom of Information Act Program.

Implements the Freedom of Information Act in DOD, and provides guidance on the types of information which must be released, or withheld, from public disclosure.

DODD 5500.7 Standards of Conduct (May 6, 1987).

Prohibits the use of "inside information" by DOD employees for personal advantage or the advantage of others; this prohibition continues even after termination of Government service or employment.

GOVERNMENT PROTECTION OF UNCLASSIFIED GOVERNMENT PLANNING DATA

Part IV. Governmental planning and budgetary materials cover the entire data spectrum from unclassified, freely disclosed information to strictly controlled, classified documents. Accordingly, the protection levels afforded this data vary considerably. For example, each year the DOD undergoes an annual budget cycle which culminates with the submission of a proposed defense budget to the President of the United States, for subsequent approval and transmission to the Congress. In the course of this cycle, known as the Planning, Programming and Budgeting System (PPBS), certain documents are produced which reflect potential procurements of the Department. These documents include, but are not limited to, Program Elements (along with a narrative summary known as a Program Element Description [PED]), Program Objective Memoranda (POM) and the Five Year Defense Plan (FYDP). These documents also contain proprietary and classified information.

The basic protections afforded classified and proprietary data are governed by a multitude of statutes and regulations, as set forth in Parts I through III of this document. Certain Governmental planning and budget data, while not proprietary or classified per se, may nonetheless be protected from public disclosure in order to ensure the integrity of the procurement process. Other data may require public disclosure in order to encourage increased competition from a greater number of potential offerors.

The following statutes and regulations provide the legal basis for the protection of unclassified Governmental planning and budgetary data.

STATUTES

Although there are no statutes which specifically address the protection of unclassified Government planning and budget data, the Freedom of Information Act does grant a qualified "privilege" regarding the release of sensitive commercial or financial information generated by the Government. In addition, where such information is wrongfully released, acquired, or used, criminal statutes such as 18 U.S.C. § 286 (conspiracy to defraud the Government with respect to claims), 18 U.S.C. § 287 (false, fictitious or fraudulent claims), 18 U.S.C. § 371 (conspiracy to commit an offense or to defraud the United States), 18 U.S.C. § 793 (gathering, transmitting or losing defense information), 18 U.S.C. § 1001 (false, fictitious or fraudulent statements generally), 18 U.S.C. § 1341 (frauds and swindles using the mails), and 18 U.S.C. § 1343 (fraud by wire, radio or television) may be applicable. The disclosure, however, of certain budgetary and schedule information is required by Pub. L. 100-180.

5 U.S.C. § 552 Freedom of Information Act.

Section (b)(5) of the Act exempts inter-agency/ intra-agency memorandums or letters from disclosure which would not be available by law to a party, other than an agency, in litigation with the agency.

Pub. L. 100-180 National Defense Authorization Act for Fiscal Years 1988 and 1989.

It is the sense of Congress that the Secretary of Defense should disclose, in a non-classified form, information about certain Special Access Programs with respect to total program cost, the amount of the annual program budget request and a general description of program schedule. Information regarding the programs must be submitted to Congress.

31 U.S.C. § 1108 Preparation and Submission of Appropriations Requests to the President.

Agency heads are required to prepare and submit their appropriation requests to the President. Agencies are prohibited from submitting an appropriations estimate or request, or a request for an increase in that estimate or request, directly to Congress or a Congressional committee unless requested by either House of Congress.

OFFICE OF MANAGEMENT AND BUDGET (OMB) POLICY

OMB Circ. A-10 Responsibilities for Disclosure with Respect to the Budget (November 12, 1976).

Requires confidentiality prior to the President's transmission of agency budget requests and supporting materials to Congress.

OMB Circ. A-11 Preparation and Submission of Budget Estimates (July 1984).

Agencies are permitted to disclose budgetary records following the end of the fiscal year to which the records pertain, if otherwise appropriate, in response to a request under the

Freedom of Information Act (FOIA). The guidance notes that most budgetary documents should be exempt from public disclosure under 5 U.S.C. § 552(b)(5), i.e., exemption 5.

FEDERAL ACQUISITION REGULATION (FAR) PROVISIONS

FAR 5.404 — Release of Long-Range Acquisition Estimates.

Encourages the release of unclassified, long-range acquisition requirements to assist industry planning and to locate additional sources of supply. Long-range acquisition requirements must be widely publicized to all parties simultaneously.

FAR 7.304 — Procedures (Under A-76 Contracting Out).

The Government cost estimate for performance must be submitted to the contracting officer in a sealed envelope.

FAR 14.211 — Release of Acquisition Information.

Prohibits the pre-solicitation release of information concerning a proposed acquisition except under specified circumstances.

FAR 35.004 — Publishing Requirements and Expanding Research and Development Sources.

Suggests early identification and publication of agency R&D needs and requirements, including notices in the Commerce Business Daily, in order to develop information on potential sources (including small business concerns) which are competent to perform R&D work.

DOD FAR SUPPLEMENT (DFARS)

DFARS 5.404-2 — Announcement of Long-Range Acquisition Estimates.

Activities which publish long-range procurement estimates may announce in the Commerce Business Daily that these estimates have been published, and are available from the Contracting Officer.

DFARS 7.1 — Acquisition Plans.

Requires DOD activites to develop detailed acquisition plans when they undertake procurements over specified dollar thresholds. (Since acquisition plans contain important information on Governmental procurement plans and budgetary schedules, procurement sensitive information in acquisition plans must be carefully safeguarded by Government personnel.)

DFARS 15.6 — Source Selection (Negotiated Contracts).

Provides an alternative "Four-Step" source selection procedure which emphasizes an early and open dialogue between the Government and all competitors in order to establish a better understanding of the Government's needs. This early communication includes pre-solicitation notices and conferences, pre-proposal conferences, informal solicitations and tailored specifications.

DFARS 24.2 — Freedom of Information Act.

Cites relevant guidance for the release of information by DoD under the Freedom of Information Act.

DEPARTMENT OF DEFENSE DIRECTIVES (DODD) AND INSTRUCTIONS (DODI)

DODD 5400.4 — Provision of Information to Congress (January 30, 1978).

DOD activities are required, when answering constituents' letters to members of Congress, to observe the restrictions on official information which, in the best interests of the public as a whole, should not be given general circulation. (This would apply to procurement sensitive Government planning and budget data.)

DODD 5400.7 — DoD Freedom of Information Act Program.

Implements the Freedom of Information Act in DOD, and provides guidance on the types of information that must be released, or withheld, from public disclosure.

DODD 5500.7 — Standards of Conduct (May 6, 1987).

Prohibits the use of "inside information" by DOD employees for personal advantage or the advantage of others; this prohibition continues even after termination of Government service or employment.

DODD 7050.1 — Defense Hotline Program (March 20, 1987).

Outlines requirements for DoD Hotline Program to investigate allegations of fraud, waste, and abuse (including the misuse of Government information) within DoD and its components.

DODD 7050.4 — Awards for Cost Savings Resulting from the Disclosure of Fraud, Waste, or Mismanagement (September 7, 1984).

Authorizes DOD to provide cash awards to employees who expose fraud, waste, or mismanagement of Government resources if their disclosures result in cost savings to DoD. The identity of the award recipients can remain confidential. The definition of fraud includes the unauthorized disclosure of official information related to procurement and disposal matters.

DODD 7050.5 — Coordination of Remedies for Fraud and Corruption Related to Procurement Activities (June 28, 1985).

Provides some examples of the adverse impact of fraud on the DoD mission, including the following: endangerment of personnel or property; monetary loss; denigration of program or personnel integrity; compromise of the procurement process; and reduction or loss of mission readiness. (Therefore, the unauthorized disclosure of procurement sensitive information is a form of fraud and susceptible to the remedies for fraud. By treating it is a serious matter, DoD emphasizes the importance of the restrictions on the use of Government information.)

SYNOPSIS OF MAXIMUM PENALTIES

UNLAWFUL DISCLOSURE OR USE OF PROPRIETARY DATA
OR GOVERNMENT PLANNING AND BUDGETARY INFORMATION

18 U.S.C. § 201(b) — Bribery.

Penalty: 15 years imprisonment and/or a fine of three times the monetary equivalent of the thing of value.

18 U.S.C. § 201(c) — Gratuity.

Penalty: 2 years imprisonment and/or a criminal fine.

18 U.S.C. § 286 — Conspiracy to Defraud the Government With Respect to Claims.

Penalty: 10 years imprisonment and/or $10,000 fine.

18 U.S.C. § 287 — False, Fictitious or Fraudulent Claims.

Penalty: 5 years imprisonment and/or $1,000,000 fine (where DoD contract involved).

18 U.S.C. § 371 — Conspiracy to Commit an Offense or Defraud the Government.

Penalty: 5 years imprisonment and/or a $10,000 fine.

18 U.S.C. § 641 — Embezzlement and Theft: Public Money or Records.

Penalty: 5 years imprisonment and/or a $10,000 fine.

18 U.S.C. § 793 — Gathering, Transmitting or Losing Defense Information.

Penalty: 10 years imprisonment and/or a $10,000 fine.

18 U.S.C. § 794	Gathering or Delivering Defense Information to Aid a Foreign Government. Penalty: Death or imprisonment by any term of years or for life.
18 U.S.C. § 798	Disclosure of Classified Information. Penalty: 10 years imprisonment and/or a $10,000 fine.
18 U.S.C. § 1001	False Statements or Entries Generally. Penalty: 5 years imprisonment and/or $10,000 fine.
18 U.S.C. § 1341	Frauds and Swindles. Penalty: 5 years imprisonment and/or $1,000 fine.
18 U.S.C. § 1343	Fraud by Wire, Radio or Television. Penalty: 5 years imprisonment and/or $1,000 fine.
18 U.S.C. § 1905	Disclosure of Confidential Information. Penalty: 1 year imprisonment and/or a $1000 fine.
50 U.S.C. § 783	Communication of Classified Information by Government Officer or Employee. Penalty: 10 years imprisonment and/or a $10,000 fine.

DEPARTMENT OF THE ARMY
OFFICE OF THE UNDER SECRETARY
WASHINGTON, D.C. 20310

19 January 1989

Honorable Carl M. Levin
Chairman
Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is in response to your request of December 16, 1988 for information to assist in preparation for hearings on the issue of "inside information."

The enclosed documents provide the information requested. The Army, in conjunction with OSD and the other Services, is in the process of conducting further reviews regarding the effectiveness of the policies and procedures governing the release of procurement and planning information. This review, with industry participation, should provide more information to answer your questions with regard to anticipated changes.

I hope this will be of assistance in your preparation for the hearings. If there are further requirements, please advise me.

Sincerely,

M. P. W. Stone

Michael P. W. Stone
Under Secretary of the Army

Enclosures

GENERAL QUESTIONS

1. Please list all existing rules and regulations of the Army regarding the disclosure of procurement and planning information to private contractors.

RESPONSE: A list of existing Army rules and regulations regarding the disclosure of procurement and planning information to private contractors is included (enclosure 2). Enclosure 3 is a list of the Federal Acquisition Regulation and Department of Defense guidelines.

2. Does the Army believe that existing rules and regulations give adequate guidance to Army officials and private contractors and consultants as to what types of information may and may not be disclosed?

RESPONSE: The existing rules and regulations do provide adequate guidance, but as stated in the cover letter, a review as to the implementation of the rules and regulations is necessary and is in process. In addition to this review with industry, the Army Regulation on Standards of Conduct, AR 600-50, will be revised upon receipt of Office of Federal Procurement Policy guidance resulting from recent legislation.

3. Has the Army undertaken any review of its document disclosure policies and practices in light of the "Ill Wind" investigation? If so, please outline the steps that have been taken and the additional steps that are planned to complete this review.

RESPONSE: A review of our document disclosure policies and practices was accomplished by the Army, along with the other Services, at the time of the "Ill Wind" investigation disclosure. These policies and practices are dictated by the rules and regulations cited above and were deemed sufficient. But as stated in paragraph 2 above, a review for effectiveness of implementation is ongoing.

BEST AVAILABLE COPY

4. Other than any action that may have been taken in response to the "Ill Wind" investigation has the Army taken any disciplinary action against Army officials in the last five years because of improper disclosure of procurement or planning information to a private contractor? If so, in how many cases has such action been taken?

RESPONSE: The Army Crime Records Center reports of investigations are retrievable by indicating the offense code. The offense code that contains the above type reports is of a broad nature--not specifically coded as dealing with improper disclosure of procurement or planning information to a private contractor. The extraction of the information would require an extensive review of the files which was not possible within the time constraints of your request. However, since January 1986 a program of monitorship of certain cases was instituted that requires reporting to the DOD IG. The below listed cases are from that program:

An Army officer received a reprimand for improperly releasing procurement information regarding contracts to be awarded.

An Army officer was indicted for providing classified procurement information to a representative of a contractor.

A National Guard Bureau officer was convicted of receiving gratuities from a contractor in exchange for release of procurement information.

A National Guard enlisted member was courtmartialled for dereliction of duty for providing procurement information to a contractor.

These are the only cases we are aware of at this time. If you require further information it will take approximately one month to review the reports of investigation for the specific offenses.

The information requested on the Army disclosure policy of a number of specific types of documents has been compiled and provided as enclosure 4. The responses are of a general nature as the releasibility of the information, in many cases, is often dependent on the stage of the acquisition.

ARMY GUIDANCE DOCUMENTS

PUB DATE	NUMBER	SUBJECT/SYNOPSIS	DIST
4-1-88	AFARS	Army policy on procurement with specific areas as indicated on list to be provided by OSD DAR Council, i.e., Part 3, Improper Business Practices and Personal Conflicts of Interest; Subpart 5.4, Release of Information, etc.	Acquisition Legal
10-9-87	AMC-P 715-3	Source Selection Pamphlet: Guidelines on conducting source selections which includes policy on protecting data.	A,USAR NG,D
11-15-83	AR 1-100	Gifts and Donations: Policies and procedures for accepting and administering gifts to the Army subject to 10 USC 2601 and acceptance of gifts not covered by statute.	C,USAR NG, D
5-1-87	AR 1-101	Gifts and Donations to Individuals: Prescribes policies governing acceptance of certain types of gifts for distribution to military personnel. Only desirable and useful gifts that contribute to health, comfort, convenience and morale of an individual with restrictions on acceptance.	C,USAR NG, D
11-30-72	AR 1-210	Participation in Activities of Private Organizations: Policy on Department of Army agencies, commands, and personnel participation in activities of private or nongovernmental organizations, societies or associations.	C,USAR NG, D

12-1-83 (Rev 1-1-84)	AR 1-211	Attendance of Military and/or Civilian Personnel at Private Organization Meetings: Along with JTR, governs attendance at government expense of technical, scientific, professional or similar organizations for the purpose of continuing education, training and professional development.	C,USAR NG, D
2-15-83	AR 10-19	Acquisition Management Review Agency Operations: Guidelines for SARD-KM reviews of acquisition to determine effectiveness and efficiency of the acquisition process Army-wide.	A,USAR NG,D
5-1-81	AR 15-14	Systems Acquisition Review Council (ASARC) Procedures: Procedures on ASARC including statement that discussions are considered privileged and memo of meeting will not be released outside of the Army.	A,USAR NG,D
7-15-86	AR 27-40	Litigation: Chapter 8-Legal Service Remedies in Procurement Fraud: Policies, procedures and responsibilities for reporting and resolving allegations of procurement fraud or irregularities. Implements DODD 7050-5.	C,USAR NG,C
9-5-86	AR 36-2	Processing Internal and External Audit Reports: Policy on access to and release of information regarding DOD-IG, AAA and GAO audits and reports.	C
7-1-82	AR 36-5	Auditing Service in the Department of the Army: Policy on internal audits by AAA requires restrictive marking on released material. Internal audits assist in determining whether management, policies, practices, procedures and controls are effective. Audits also assist in detecting fraud and waste within various programs and activities.	C,USAR NG, D

BEST AVAILABLE COPY

5-20-85	AR 36-7	Professional Audit Standards: Standards for auditors performing Army audits. Alerts auditors to watch for fraud, abuse and illegal acts and what action to take upon discovery.	A,USAR NG,B
11-12-86	AR 70-1	System Acquisition Policy and Procedures: Implements DODD 5000.1, 5000.37, and 5000.2. Contains policy, procedures and responsibilities for conducting research, development and acquisition of materiel items and systems. Contains cautionary language on release of source selection data.	D
3-31-86	AR 70-11	Dissemination of Scientific and Technical Information: Procedures for providing and releasing information for Defense Technical Information center by DOD, contractors, potential contractors and grantees. Includes procedures for classified reporting and marking documents before submission.	D,USAR NG, D
12-11-76	AR 70-17	System/Program/Project/Product Management: Contains requirement for program/project manager to assure release of information is controlled according to regulations.	D
5-5-77	AR 70-21	Certification and Registration for Access to DOD Scientific and Technical Info: Policy on access to controlled scientific and technical information (STINFO). Registration with Defense Documentation Center is required and registrants can include active and potential contractors.	C,USAR NG, D

3-10-86	AR 70-31	Standards for Technical Reporting: Policy for originating, preparing, reviewing, marking and disseminating technical documentation. Implements DODD 5230.25. Withholding of Unclassified Technical Data from Public Disclosure.	D,USAR NG, O
4-15-80	AR 70-57	Military-Civilian Technology Transfer: Implements Pub. L. 96-480(Stevenson-Wedler Technology Innovative Act of 1980) and DODD 5100.36, Defense Scientific and Technical Information Program involving R&D technology transfer to civilian agencies. Contains warnings about not encroaching on private enterprise and that Army personnel refrain from aggressive promotion that could be construed as an attempt to push an Army program not needed for Defense.	D,USAR
12-1-79	AR 70-67	Production Readiness Review (PRR): Policy on conducting PRR with guidance that proprietary and competition-sensitive contractor data will be safeguarded.	C,USAR D
10-1-82	AR 340-17	Release of Information and Records from Army Files: Guidance on safeguarding of FOUO information which includes procurement sensitive data.	A
12-24-86	AR 360-5	Public Information: Policy on release of unclassified information with guidelines on what type of data must go to Public Affairs for release approval.	C,USAR NG, O

BEST AVAILABLE COPY

2-15-88	AR 380-5	Department of Army Information Security Program: Implements EO 12356, National Security Information, on classifying, marking and safeguarding classified information.	D,USAR NG, O
11-30-86	AR 380-65	Security Classification Guidelines for Emerging Technologies: Guidance on classification of information on RDT&E of rocket power, high-energy laser, partical beams, high-power microwaves and VHSIC.	O
3-15-92 (Rev 7-15-84)	AR 380-150	Access to and Dissemination of Restricted Data: Guidance on safeguarding restricted data within Department of Army.	O
1-2 88	AR 600-50	Army Standards of Conduct for Department of Army Personnel: Army policy on proper business practices including relationships with vendors.	D,USAR NG,O
11-15-81	AR 715-11	Army Acquisition Management Review Program: Defines policy that USARO-KM follows on program or acquisition management reviews in conjunction with AR 10-19. Pertains primarily to review of acquisition process concerned with execution and administration of contracts.	Acquisition
11-1 85	AR 710 60 (C)	Secure Environment Contracting: Policy to be followed for contracting in subject areas. Guidance on reviews to be performed.	Acquisition
12-27-82 (In Rev)	DA Memo 11 3	DOD outline procedures to be followed in the Army. Implement DODD 5210.1. 20 Mar 57.	D,USAR NG, O

BEST AVAILABLE COPY

3-19-84	DA Memo 360-3	Clearance of Statistical Material for Release Outside the Department of Army	Spec
6-4-84	DA Memo 360-9	Review and Clearance of Information for Release Outside DOD	Spec
5-22-87	DA Memo 36-1	Release of Army Audit Agency Audit Reports	Spec

BEST AVAILABLE COPY

Distribution codes:

A	Publication contains information that applies at company and similar organization level.
B	Publication contains information that applies at brigade, regiment group, battle group, and battalion levels.
C	Publication contains information that applies at installations and activities and to commands down to and including headquarters of divisions and comparable commands.
D	Publication contains information that applies at Headquarters, Department of the Army (HQDA), major commands (MAJCOMs), and installations and activities immediately subordinate to HQDA and MAJCOMs.
USAR	Army Reserve
NG	National Guard

(The code following these abbreviations indicates to what level distribution was made.)

BEST AVAILABLE COPY

REGULATORY DATA BASE ON PROTECTION OF DATA

CLASSIFIED DATA

FAR 4.4	Safeguarding Classified Information Within Industry
FAR 5.102(b)	Availability of Solicitations
FAR 5.202(a)	Exceptions
FAR 5.403	Requests from Members of Congress
FAR 5.404-1(b)(1)	Release of Long-Range Acquisition Estimates
FAR 6.302-6(b)	National Security
FAR 14.402.2	Classified Bids
FAR 14.408.2	Award of Classified Contracts
FAR 24.202(b)	Freedom of Information Act
FAR 52.204-2	Security Requirements
FAR 52.227-10	Filing of Patent Applications--Classified Subject Matter
DFARS 5.404-1	Release Procedures
DOD 5220.22-M	Industrial Security Manual for Safeguarding Classified Information
DODD 5230.9	Clearance of DOD Information for Public Release
DODD 5400.4	Provision of Information to Congress
DODD 5400.7	DOD Freedom of Information Act Program

CONTRACTOR PROPRIETARY DATA

FAR 6.302-1(b)(2)	Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements
FAR 7.106(b)(1)	Additional Requirements for Major Systems
FAR 9.505-2(a)(i)	Preparing Specifications or Work Statements
FAR 9.505-4	Obtaining Access to Proprietary Information
FAR 14.404-4	Restrictions on Disclosure of Descriptive Literature
FAR 15.413	Disclosure and Use of Information Before Award
FAR 15.504	Advance Guidance
FAR 15.508	Prohibitions
FAR 15.509	Limited Use of Data
FAR 15.610(d)	Written or Oral Discussion
FAR 15.1001(c)(v)	Notifications to Unsuccessful Offerors
FAR 17.403(b)	Procedures
FAR 24.202(b)	Policy
FAR Part 27	Patents, Data, and Copyrights
FAR Part 30.201-4	Privileged and Confidential Information
FAR Part 35.011	Data
FAR Part 44.306	Disclosure of Approval Status
FAR 52.215-12	Restriction on Disclosure and Use of Data

FAR 52.230-5	Disclosure and Consistency of Cost Accounting Standards
DFARS 52.217-7207	Rights in Data and Computer Software
DFARS 52.217-7265	Restrictive Markings on Technical Data
DFARS 52.217-7266	Identification of Technical Data
DFARS 52.217-7267	Data Requirements
DFARS 52.227-7013	Rights in Technical Data and Computer Software
DFARS 52.227-7014	Predetermination of Rights in Technical Data
DFARS 52.227-7015	Rights in Technical Data--Specific Acquisition
DFARS 52.227-7017	Rights in Technical Data--Major System and Subsystem Contracts
DFARS 52.227-7018	Restrictive Markings on Technical Data
DFARS 52.227-7019	Identification of Restricted Rights Computer Software
DFARS 52.227-7020	Rights in Data--Special Works
DFARS 52.227-7021	Rights in Data--Existing Works
DFARS 52.227-7022	Government Rights (Unlimited)
DFARS 52.227-7023	Drawings and Other Data to Become Property of Government
DFARS 52.227-7024	Notice and Approval of Restricted Designs
DFARS 52.227-7025	Rights in Technical Data and Computer Software (SBIR Program)
DFARS 52.227-7026	Deferred Delivery of Technical Data or Computer Software
DFARS 52.227-7027	Deferred Ordering of Technical Data or Computer Software
DFARS 52.227-7028	Requirement for Technical Data Certification
DFARS 52.227-7029	Identification of Technical Data
DFARS 52.227-7030	Technical Data--Withholding of Payment
DFARS 52.227-7031	Data Requirements
DFARS 52.227-7032	Rights in Technical Data and Computer Software (Foreign)
DFARS 52.227-7033	Rights in Shop Drawings
DODD 4100.15	Commercial Activities Program
DODD 4100.33	Commercial Activities Program Procedures
DODD 4105.62	Selection of Contractual Sources for Major Defense Systems
DODD 5400.7	DOD Freedom of Information Act Program

GOVERNMENT PROCUREMENT SENSITIVE DATA (NOT PROPRIETARY)

FAR 3.1	Safeguards
FAR 3.2	Contractor Gratuities to Government Personnel
FAR 3.3	Reports of Suspected Antitrust Violations
FAR 3.4	Contingent Fees
FAR 3.5	Other Improper Business Practices
FAR 3.6	Contracts with Government Employees or Organizations Owned or Controlled by them
FAR 3.7	Voiding and Rescinding Contracts
FAR 5.1	Dissemination of Information
FAR 5.4	Release of Information
FAR 6.1	Full and Open Competition
FAR 6.2	Full and Open Competition After Exclusion of Sources
FAR 6.3	Other Than Full and Open Competition

FAR 5.502	Duties and Responsibilities
FAR 7.1	Acquisition Plans
FAR 7.304(d)	Procedures
FAR 9.105.1	Obtaining Information
FAR 9.105-3	Disclosure of Preaward Information
FAR 9.5	Organizational Conflicts of Interest
FAR 10.002	Policy
FAR 13.106	Competition and Price Reasonableness
FAR 14.103-2	Limitations
FAR 14.205-5	Release of Solicitation Mailing Lists
FAR 14.211	Release of Acquisition Information
FAR 14.401	Receipt and Safeguarding of Bids
FAR 15.413	Disclosure and Use of Information Before Award
FAR 15.6	Source Selection
FAR Part 24	Protection of Privacy and Freedom of Information
FAR 30.2	Disclosure Requirements
FAR 31.205-47	Defense of Fraud Proceedings
FAR 34.005-1	Competition
FAR 35.004	Publicizing Requirements and Expanding Research and Development Sources
FAR 35.007	Solicitations
FAR 36.203(c)	Government Estimate of Construction Costs
FAR 36.303	Invitations for Bids
FAR 36.602-1	Selection Criteria
FAR 36-605(b)	Government Cost Estimate for Architect-Engineer Work
FAR 37.105	Competition in Service Contracting
FAR 47.101(c)	Policies
FAR 50.302-3	Formalizing Informal Commitments
FAR 52.203-1	Officials Not To Benefit
FAR 52.203-2	Certificate of Independent Price Determination
FAR 52.203-3	Gratuities
FAR 52.203-4	Contingent Fee Representation and Agreement
FAR 52.203-5	Covenant Against Contingent Fees
FAR 52.207-1	Notice of Cost Comparison (Sealed Bid)
FAR 52.207-2	Notice of Cost Comparison (Negotiated)
FAR 52.214-4	False Statements in Bids
FAR 52.214-10	Contract Award--Sealed Bidding
FAR 52.214-17	Affiliated Bidders
FAR 52.227-1	Authorization and Consent
FAR 52.227-2	Notice and Assistance Regarding Patent
FAR 52,227-3	and Copyright Infringement
FAR 52.227-4	Patent Indemnity--Construction Contracts
FAR 52.227-5	Waiver of Indemnity
FAR 52.227-6	Royalty Information
FAR 52.227-7	Patents--Notice of Government Licensee
FAR 52.227-11	Patent Rights--Retention by the Contractor (Short Form)
FAR 52.227-12	Patent Rights--Retention by the Contractor (Long Form)
FAR 52.227-13	Patent Rights--Acquisition by the Government
DFARS Part 3	Improper Business Practices and Personal Conflicts of Interest

DFARS 5.4	Release of Information
DFARS 6.2	Full and Open Competition After Exclusion of Sources
DFARS 6.3	Other Than Full and Open Competition
DFARS 7.1	Acquisition Plans
DFARS 15.6	Source Selection
DFARS 24.1	Protection of Individual Privacy
DFARS 52.203-7001	Special Prohibition on Employment
DFARS 52.203-7003	Display of DOD Hotline Poster
DFARS 52.217-7122	Notice and Assistance Regarding Patent and Copyright Infringement
DFARS 52.217-7203	Patent Indemnity
DFARS 70.803	Procedures for Acquiring GSA TSP Services
DODD 4100.15	Commercial Activities Program
DODD 4100.33	Commercial Activities Program Procedures
DODD 4105.62	Selection of Contractual Sources for Major Defense Systems
DODD 4245.9	Competitive Acquisitions
DODD 5000.1	Major and Non-Major Defense Acquisition Systems
DODD 5000.2	Defense Acquisition Program Procedures
DODD 5000.3	Test and Evaluation
DODD 5122.5	Asst Secretary of Defense (Public Affairs)
DODD 5200.1	DOD Information Security Program
DOD 5200.1-R	DOD Information Security Program Regulation
DODD 5230.9	Clearance of DOD Information for Public Release
DODD 5400.4	Provision of Information to Congress
DODD 5400.7	DOD Freedom of Information Act Program
DODD 5500.7	Standards of Conduct
DODD 7050.1	Defense Hotline Program
DODD 7050.3	Access to Records and Information by the Inspector General, Department of Defense
DODD 7050.4	Awards for Cost Savings Resulting from the Disclosure of Fraud, Waste, or Mismanagement
DODD 7050.5	Coordination of Remedies for Fraud and Corruption Related to Procurement Activities

GOVERNMENT PLANNING DATA (NOT CLASSIFIED)

FAR 7.1	Acquisition Plans
DFARS 7.1	Acquisition Plans
DODD 5400.4	Provision of Information to Congress

ARMY'S DISCLOSURE POSITION

DOCUMENT: Document set, Planning and Budgetary Information.

1. Does the Army have an official position as to whether this type of document should be disclosed to contractors? If so, what is the Army's position?

Yes. Planning and Budgetary Information covered under OMB Circular A-11, PARA 12.7 **(Encl 1)** in reference to release of budget data prior to official transmission of the budget to Congress states, "Agencies should furnish this information to Congressional committees, CBO or GAO only after the basic documents or proposals, that the information requests are intended to amplify have been transmitted officially to Congress". Furthermore, the documents are covered under Army's Acquisition Executive (AAE) Policy Memorandum #88-2, **(Encl 2)** which states; "Without the expressed written consent of the office, release of internal planning documents are not authorized".

The exception this year will be the Five Year Defense Plan (FYDP) which will be provided as contained in FY88 Congressional Language.

2. Does the Army have any applicable rules, regulations, instructions or other written guidance to its officals regarding the disclosure of this type of document? If so, please provide a copy.

Yes: A) OMB Circular A-11, PARA 12.7. **(Encl 1)**
B) Army Acquisition Executive (AAE) Policy Memorandum #88-2. **(Encl 2)**

3. If disclosure is left to the discretion of individual officials within the Army, which officials are responsible for this decision and what criteria guides their discretion?

N/A

4. Is the Army currently reassessing its position with regard to this document? If so, state current position and current rules of the Army and nature of contemplated change.

No

ARMY'S DISCLOSURE POSITION

DOCUMENT: Statement of Need (SON), Justification for Major System New Start (JMSNS), Operational Requirement (OR)

The SON and OR are Air Force and Navy documents respectively. The JMSNS has been replaced by the Mission Need Statement (MNS). The Army uses a combination of two documents for most program developments, an Operational and Organizational (O&O) Plan and a Required Operational Capability (ROC) document in addition to the MNS for potential major programs. Other documents which are similar but serve other programs are the Training Device Requirement (TDR), Commercial Training Device Requirement (CTDR), Training Device Need Statement (TDNS), and Joint Service Operational Requirement (JSOR).

1. Does the Army have an official position as to whether this type of document should be disclosed to contractors? If so, what is the Army's position?

The Army position is that industry possesses the technical capability and expertise to greatly assist us in the refinement of our materiel needs and offering alternatives early in the materiel acquisition process. Therefore, interested members of industry are provided the opportunity to review and make comments on materiel requirements documents early in their development. In addition, all materiel requirements documents are provided to the Defense Technical Information Center after approval where they can be provided to any contractor who has a valid contract with the US Army with due consideration given to the security aspect of the document. These documents are also available through Freedom of Information Act requests where classified or sensitive data can be removed.

2. Does the Army have any applicable rules, regulations, instructions or other written guidance to its officials regarding the disclosure of this type of document? If so, please provide a copy.

There is a Letter of Instruction (LOI) which specifically sets forth the policy and procedures for industry review of US Army materiel requirements documents. The procedural aspects of these actions and the LOI are in the current version of the AMC/TRADOC Pam 70-2 and are being updated. The pamphlet will also be upgraded to a DA pamphlet. The LOI considers security and classification requirements and distribution to foreign industrial recipients. A copy of current LOI is provided.

3. If disclosure is left to the discretion of individual officials within the Army, which officials are responsible for this decision and what criteria guide their discretion?

Not applicable

4. Is the Army currently reassessing its position with regard to this document? If so, state current position and current rules of the Army and nature of contemplated change.

See answer to question 1 above concerning update.

ARMY'S DISCLOSURE POSITION

DOCUMENT: Issue papers and responses

1. Does the Army have an official position as to whether this type of document should be disclosed to contractors? If so, what is the Army's position?

Issue papers and responses that are generated during the programming and budgeting cycle in response to possible changes in priority, funding levels, quantities, and other research, development, and acquisition questions, are internal US Army papers and not provided to members of industry. These documents are for planning purposes and do not necessarily reflect the final position of the Army. In addition, most of these are classified or reflect classifiable data and cannot be release except in accordance with security regulations.

2. Does the Army have any applicable rules, regulations, instructions or other written guidance to its officials regarding the disclosure of this type of document? If so, please provide a copy.

This information is normally classifiable/classified and cannot be provided to contractors unless there is a need to know (e.g. necessary to accomplish a valid contract), contractor is cleared to receive this type of information, and storage requirements can be met. Because this information is for internal use in planning, programming, and budgeting actions, there should be no need to provide it to contractors. Security dissemination requirements are reflected in AR 380-5, para 7-100; classifying criteria are in para 2-202 of the same regulation.

3. If disclosure is left to the discretion of individual officials within the Army, which officials are responsible for this decision and what criteria guide their discretion?

All personnel are supposed to be aware of the security dissemination and classifying requirements contained in AR 380-5. Since issue papers and responses come from many internal sources, there is no set policy for how each will be handled.

4. Is the Army currently reassessing its position with regard to this document? If so, state current position and current rules of the Army and nature of contemplated change.

AR 380-5 was revised effective 28 February 1988. There is no readily identifiable action directed toward changing the handling procedures of these papers.

ARMY'S DISCLOSURE POSITION

DOCUMENT: R & D Master Plans

1. Does the Army have an official position as to whether this type of document should be disclosed to contractors? If so, what is the Army's position?

The Long Range Research, Development, and Acquisition Plan (LRRDAP) is a listing of the RDA activities expected to be conducted by the Army over the period of the Program Objective Memorandum (POM). The LRRDAP is a data base that reflects prioritized programs in support of requirements identified through the Mission Area Analysis (MAA) and summarized in the Battlefield Development Plan (BDP). The document is classified Confidential because it reflects the prioritization of deficiencies and information on specific weapons programs.

2. Does the Army have any applicable rules, regulations, instructions or other written guidance to its officials regarding the disclosure of this type of document? If so, please provide a copy.

Rules governing the disclosure of classified data are in AR 380-5. As applies to this document, para 2-202 regarding the classification criteria and para 7-100 on dissemination of classified information are applicable.

3. If disclosure is left to the discretion of individual officials within the Army, which officials are responsible for this decision and what criteria guide their discretion?

Rules governing disclosure of this information are contained in AR 380-5.

4. Is the Army currently reassessing its position with regard to this document? If so, state current position and current rules of the Army and nature of contemplated change.

No changes are currently contemplated.

ARMY'S DISCLOSURE POSITION

DOCUMENT: Service Master Plans/Modernization Plans/Program Plans

1. Does the Army have an official position as to whether this type of document should be disclosed to contractors? If so, what is the Army's position?

These documents are internal to the management of functional areas of the US Army. These documents provide the direction and transition management guidance for the functional areas and are not normally provided to any member of industry, however that does not preclude the release of portions/sections of the documents, after approval has been received on the basic document from the appropriate authority. The exception to this will be the Army Technology Base Master Plan (ATBMP) which is unclassified as a basic document and intended for use by the tech base community in industry. There are classified appendicies which will not be released as a part of this document. In addition, much of the information contained in the Master/Modernization/Program plans is sensitive and may be classifiable.

2. Does the Army have any applicable rules, regulations, instructions or other written guidance to its officials regarding the disclosure of this type of document? If so, please provide a copy.

Rules for dissemination of classified material are contained in AR 380-5. Release of unclassified material is governed by AR 380-10.

3. If disclosure is left to the discretion of individual officials within the Army, which officials are responsible for this decision and what criteria guide their discretion?

Unanswerable, the issue has never been addressed.

4. Is the Army currently reassessing its position with regard to this document? If so, state current position and current rules of the Army and nature of contemplated change.

The Army is reassessing its total policy on Master/Modernization/Program Plans at this time to bring them in line with technology and the future "big picture" of the Army. Nothing with respect to release of these documents has been discussed.

BEST AVAILABLE COPY

ARMY'S DISCLOSURE POSITION

DOCUMENT: Service Master Plans/Modernization Plans/Program Plans

1. Does the Army have an official position as to whether this type of document should be disclosed to contractors? If so, what is the Army's position?

These documents are internal to the management of functional areas of the US Army. These documents provide the direction and transition management guidance for the functional areas and are not normally provided to any member of industry, however that does not preclude the release of portions/sections of the documents, after approval has been received on the basic document from the appropriate authority. The exception to this will be the Army Technology Base Master Plan (ATBMP) which is unclassified as a basic document and intended for use by the tech base community in industry. There are classified appendicies which will not be released as a part of this document. In addition, much of the information contained in the Master/Modernization/Program plans is sensitive and may be classifiable.

2. Does the Army have any applicable rules, regulations, instructions or other written guidance to its officials regarding the disclosure of this type of document? If so, please provide a copy.

Rules for dissemination of classified material are contained in AR 380-5. Release of unclassified material is governed by AR 340-17. Disclosure of information to foreign nationals is governed by AR 380-10.

3. If disclosure is left to the discretion of individual officials within the Army, which officials are responsible for this decision and what criteria guide their discretion?

Unanswerable, the issue has never been addressed.

4. Is the Army currently reassessing its position with regard to this document? If so, state current position and current rules of the Army and nature of contemplated change.

The Army is reassessing its total policy on Master/Modernization/Program Plans at this time to bring them in line with technology and the future "big picture" of the Army. Nothing with respect to release of these documents has been discussed.

BEST AVAILABLE COPY

ARMY'S DISCLOSURE POSITION

DOCUMENT: Mission Area Plans

1. Does the Army have an official position as to whether this type of document should be disclosed to contractors? If so, what is the Army's position?

The Mission Area Materiel Plan (MAMP) is a fully integrated, multi-appropriation effort to develop a systematic, prioritized long range research, development, and acquisition strategy for materiel acquisitions in response to established requirements and Army procurement requirements. Mission Area Analysis (MAA) documentation reflects the assessment of a capability of a force to perform within a particular battlefield or functional area. These documents are classified as they reflect priorities, military plans, weapons, capabilities, vulnerabilities, intelligence, technology, and probable operations. The documents are not releaseable to industry unless the requirements of AR 380-5, para 7-100 are met.

2. Does the Army have any applicable rules, regulations, instructions or other written guidance to its officials regarding the disclosure of this type of document? If so, please provide a copy.

AR 380-5 contains applicable guidance.

3. If disclosure is left to the discretion of individual officials within the Army, which officials are responsible for this decision and what criteria guide their discretion?

AR 380-5 contains applicable guidance.

4. Is the Army currently reassessing its position with regard to this document? If so, state current position and current rules of the Army and nature of contemplated change.

AR 380-5 was updated effective 28 Feb 1988.

ARMY'S DISCLOSURE POSITION

DOCUMENT: Integrated Priority Lists (IPLs)

1. Does the Army have an official position as to whether this type of document should be disclosed to contractors? If so, what is the Army's position?

The IPL is an OSD document not a single Service document and therefore, distribution is not governed by Army regulation. OSD IPL point of contact and US Army PAE contact confirm that the IPL is not provided to industry. Rationale for this is that the document contains what the CINCs believe are their greatest deficiencies and these are usually tied to a set of Operations Plans (OPlans). The IPL is classified and extremely sensitive with respect to national security.

2. Does the Army have any applicable rules, regulations, instructions or other written guidance to its officials regarding the disclosure of this type of document? If so, please provide a copy.

AR 380-5 is the Army implementation of DoD 5200.1-R, DOD Information Security Program, and governs the handling of this material.

3. If disclosure is left to the discretion of individual officials within the Army, which officials are responsible for this decision and what criteria guide their discretion?

AR 380-5 governs release of this material.

4. Is the Army currently reassessing its position with regard to this document? If so, state current position and current rules of the Army and nature of contemplated change.

AR 380-5 was updated effective 28 Feb 1988.

BEST AVAILABLE COPY

ARMY'S DISCLOSURE POSITION

DOCUMENT: Feasibility Studies

1. Does the Army have an official position as to whether this type of document should be disclosed to contractors? If so, what is the Army's position?

The Army does not have a document called "Feasibility Study". The Concept Formulation Package/Process (CFP) is the closest item to this topic. The concept formulation process provides the analytical basis for definition and approval of materiel requirements and program decisions at milestone decision reviews. The process consists of the analytical efforts required to identify, define, evaluate, and rank the alternatives for resolving a deficiency or taking advantage of an opportunity, to include non-materiel alternatives. This data is ususally classified and not releasable to contractors except with respect to AR 380-5. There is no policy which explicitly forbids the release of these analyses to contractors except security regulations.

2. Does the Army have any applicable rules, regulations, instructions or other written guidance to its officials regarding the disclosure of this type of document? If so, please provide a copy.

AR 380-5 provides the guidance for release of classified information to outside activities.

3. If disclosure is left to the discretion of individual officials within the Army, which officials are responsible for this decision and what criteria guide their discretion?

AR 380-5 provides this guidance.

4. Is the Army currently reassessing its position with regard to this document? If so, state current position and current rules of the Army and nature of contemplated change.

There is no attempt to change current rules on dissemination of the output from these analyses.

ARMY'S DISCLOSURE POSITION

DOCUMENT: Threat Analyses

1. Does the Army have an official position as to whether this type of document should be disclosed to contractors? If so, what is the Army's position?

Threat analyses are classified documents which are not made available to any member of industry without a valid contract and a determination from the Contracting Officer that the information is necessary for proper completion of contract requirements.

2. Does the Army have any applicable rules, regulations, instructions or other written guidance to its officials regarding the disclosure of this type of document? If so, please provide a copy.

AR 380-5 governs disclosure of classified information. In addition the FAR/AFAR provides guidance for the Contracting Officer in determining need for information.

3. If disclosure is left to the discretion of individual officials within the Army, which officials are responsible for this decision and what criteria guide their discretion?

AR 380-5 governs disclosure of classified information.

4. Is the Army currently reassessing its position with regard to this document? If so, state current position and current rules of the Army and nature of contemplated change.

AR 380-5 was updated effective 28 Feb 1988.

ARMY'S DISCLOSURE POSITION

DOCUMENT: Drafts of above documents

Drafts of all documents are treated in the same manner as the final documents. All of the same rules apply for release to industry.

1. Does the Army have an official position as to whether this type of document should be disclosed to contractors? If so, what is the Army's position?

Not applicable

2. Does the Army have any applicable rules, regulations, instructions or other written guidance to its officials regarding the disclosure of this type of document? If so, please provide a copy.

Not applicable

3. If disclosure is left to the discretion of individual officials within the Army, which officials are responsible for this decision and what criteria guide their discretion?

Not applicable

4. Is the Army currently reassessing its position with regard to this document? If so, state current position and current rules of the Army and nature of contemplated change.

Not applicable

ARMY'S DISCLOSURE POSITION

DOCUMENT: TECHNICAL STUDIES AND REPORTS

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

Technical studies and reports are considered to be similar to draft specifications, which are generally made available to industry.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

Same guidance material is applicable here as for Draft Specifications. Additionally, AR 70-31, Identification and Registration for access to DOD Scientific and Technical Information, provides policy on access to controlled scientific and technical information.

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

Same officials and criteria as for Draft Specifications.

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

No changes are envisioned at this time.

BEST AVAILABLE COPY

ARMY'S DISCLOSURE POSITION

DOCUMENT: Test Plans

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

Yes. The Army's position is that test plans describing testing to be conducted by the Army should, as a general rule, be disclosed to the contractor who manufactured the system under test. Purpose of this disclosure is to coordinate the criteria and test methods under which the system will be tested. The contractor is thereby cognizant of the test methods and the data/information that will be used by the Army to determine whether the system meets specifications and user requirements. Such cognizance is required during request for proposal negotiations, source selection, final offers and after the contractor is selected.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

Yes. Army acquisition programs are managed by Program Executive Offices, within which Program Managers are assigned to manage the acquisition of specific systems. Release/disclosure and coordination of Army test plans with the manufacturing contractor is conducted through the Test Integration Working Group, chaired by the Program Manager. The contractor may be a participant in this group at the discretion of the Program Manager. In general, disclosure of Army test plans to the contractor is encouraged, consistent with national security controls and in consideration of proprietary and competition sensitive information which may be contained in the plans. Example guidance is attached.

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

Within the regulatory guidelines, the Program Manager can exercise discretion in the release/disclosure/coordination process; questions concerning release of test plans would be referred to the Program Manager for resolution prior to release.

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

The Army is not currently reassessing its position with regard to disclosure of test plans.

ARMY'S DISCLOSURE POSITION

DOCUMENT: Failure Analyses

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

Yes. The Army's position is that Army-conducted failure analyses should, as a general rule, be disclosed to the contractor who manufactured the system under test. Purpose of this disclosure is to facilitate action (engineering redesign, software update, change in maintenance procedures, etc.) required to correct the observed failure.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

The Army does have rules and guidance on disclosure of failure analyses to contractors. Release/disclosure and discussion of Army-conducted failure analyses with the manufacturing contractor is controlled by the Program Executive Office/Program Manager. In general, disclosure of Army-conducted failure analyses to the contractor who manufactured the system under test is encouraged, consistent with national security controls and in consideration of proprietary and competition sensitive information which may be contained in the analyses. Example guidance is attached.

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

Within the stated guidelines, the Program Manager can exercise discretion in this release/disclosure/ coordination process. Army organizations producing failure analyses would refer questions on release of such analyses to the Program Manager for decision. Such release/disclosure has the specific purpose of obtaining technical support from the contractor.

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

The Army is not currently reassessing its position with regard to disclosure of failure analyses.

ARMY'S DISCLOSURE POSITION

DOCUMENT: DRAFT SPECIFICATIONS

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

The official Army position is that draft specifications, generally used in the context of new starts and major improvement programs, are to be staffed with industry to the maximum extent practical.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

Army Regulation 70-1, entitled System Acquisition Policy and Procedures, covers this subject at paragraph 3-4(b)(5). Army Materiel Command/Training and Doctrine Command Pamphlet 70-2, entitled Materiel Acquisition Handbook, covers this subject at Appendix J as amended by teletype of May 6, 1988.

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

Draft materiel requirements documents are released as deemed necessary by the materiel developer, subject to security requirements, in order to tap industry's technical expertise.

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

No changes are envisioned at this time.

BEST AVAILABLE COPY

ARMY'S DISCLOSURE POSITION

DOCUMENT: STATEMENTS OF WORK

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

Position is the same as that for Draft Specifications.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

Same guidance material is applicable here as was mentioned for Draft Specifications.

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

Same officials and criteria as for Draft Specifications.

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

No changes are envisioned at this time.

ARMY'S DISCLOSURE POSITION

DOCUMENT: PROCUREMENT REQUESTS

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

The official Army position is that advance information related to specific, future buys is not released to the public except under controlled circumstances.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

Federal Acquisition Regulation (FAR) 14.211 prohibits release of information concerning proposed acquisitions under sealed bidding procedures. FAR 15.402(b) prohibits release of advance information concerning future solicitations under negotiation procedures unless an exception applies. The exceptions are presolicitation notices and conferences (coverage at FAR 15.404 and Army Materiel Command Pamphlet 713-1, Volume 1, pages 37- 39) and research and development advance notices (covered at FAR 5.205).

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

Presolicitation notices and conferences are held at the discretion of the Contracting Officer, with the approval of the official one level higher. They are used when it is necessary to encourage industry interest, gather preliminary information, explain complicated requirements, or otherwise aid contractors in preparing their offers. Research and development advance notices are published in the Commerce Business Daily at the discretion of the Contracting Officer, and are used when it is necessary to stimulate competition.

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

No changes are envisioned at this time.

ARMY'S DISCLOSURE POSITION

DOCUMENT: DRAFT REQUESTS FOR PROPOSALS (INCLUDING EARLY DRAFTS NOT FORMALLY CIRCULATED PURSUANT TO THE FAR)

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

Formal Draft Requests for Proposals (DRFPs) are created for the purpose of obtaining industry comment on the proposed acquisition, and so are freely distributed. Informal, or working, drafts of Requests for Proposals are not disclosed to contractors.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

Guidance on the use of formal DRFPs is found at Army FAR Supplement 15.404-90, Army Materiel Command FAR Supplement 15.404-90, Army Regulation 70-1 paragraph 4-15(d)(4), and Department of Defense Directive 4105.62.

The prohibition against release of advance information concerning future solicitations is found at FAR 15.402(b), a copy of which is attached to "Procurement Requests."

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

Disclosure is not a matter of discretion, but rather the decision to prepare a DRFP at all lies with the Contracting Officer.

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

No changes are envisioned at this time.

ARMY'S DISCLOSURE POSITION

DOCUMENT: ACQUISITION PLANS

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

Acquisition Plans are to be marked "For Official Use Only" (FOUO). Acquisition policy regarding release of FOUO is set out in Army Regulation 340-17.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

Army Materiel Command teletype dated October 29, 1987 distributed this guidance to the largest volume of Army's buying activities.

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

Disclosure is not discretionary.

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

The Army position remains the same but a Defense Acquisition Regulatory (DAR) Council case 88-131 to expand this guidance to all Federal agencies is in process. A copy of the proposal under consideration is attached.

BEST AVAILABLE COPY

ARMY'S DISCLOSURE POSITION

DOCUMENT: SOURCE SELECTION PLANS

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

Source Selection Plans may not be disclosed to contractors. In fact, they are not freely available even within the Army; only source selection participants may have access to the plan.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

FAR 15.612(e) speaks of this in general terms, and Army Materiel Command Pamphlet 713-3, Volume 1, page 17 spells it out directly.

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

Disclosure not subject to discretion.

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

No changes are envisioned at this time.

BEST AVAILABLE COPY

ARMY'S DISCLOSURE POSITION

DOCUMENT: Current Funding Profiles

1. Does the Army have an official position as to whether this type of document should be disclosed to contractors? If so, what is the Army's position?

Yes. Current Funding Profiles are as of the President's Budget Submit and are contained within the budget documentation which is released with the President's Budget.

2. Does the Army have any applicable rules, regulations, instructions or other written guidance to its officals regarding the disclosure of this type of document? If so, please provide a copy.

Yes: A) OMB Circular A-11, PARA 12.7. **(Encl 1)**
B) Army Acquisition Executive (AAE) Policy Memorandum #88-2. (Encl 2)

3. If disclosure is left to the discretion of individual officials within the Army, which officials are responsible for this decision and what criteria guides their discretion?

N/A

4. Is the Army currently reassessing its position with regard to this document? If so, state current position and current rules of the Army and nature of contemplated change.

No

ARMY'S DISCLOSURE POSITION

DOCUMENT: COST MODELS

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

As the standard definition of "cost model" relates to methodology, as opposed to specific data, disclosure of cost models would be reviewed on a case-by-case basis under the requirements of the Freedom of Information Act.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

There is no guidance addressing cost models specifically.

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

Freedom of Information Act inquiries are generally handled by the cognizant legal staff.

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

No changes are envisioned at this time.

BEST AVAILABLE COPY

ARMY'S DISCLOSURE POSITION

DOCUMENT: SHOULD COST STUDIES

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

As actual evaluation material, should cost studies per se are not disclosed to contractors. However, specific portions may be used in negotiations with the subject of the study, and thereby become known.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

Army Materiel Command Regulation 715-92, entitled Should Cost, at paragraph 8.c.(3) cautions against disclosing should cost information which could weaken the Army's negotiation position. In addition, this type of material is exempt from Freedom of Information Act disclosure under exception 5, as interpreted by Army Regulation 340-17, Section 2. FAR 15.803(a) and 15.610(d) discuss this subject generally.

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

Disclosure of the study itself not subject to discretion.

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

No changes are envisioned at this time.

ARMY'S DISCLOSURE POSITION

DOCUMENT: LIFE CYCLE COST STUDIES

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

Life Cycle Cost Studies are model-derived information containing much of the same type data as in the Independent Government Cost Estimate, and are handled similarly. Moreover, the Project Manager or system proponent would also be queried prior to the release of any information to the private sector.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

The guidance applicable to "Internal Government Cost Estimates" is applicable here as well. In addition, an Army Materiel Command letter of August 20, 1985 details their position on releasing Baseline Cost Estimates, one portion of the Life Cycle System Management Model, to the General Accounting Office highlighting the concern given to releasing this cost data to even other Governmental agencies.

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

Disclosure is not subject to discretion.

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

No changes are envisioned at this time.

BEST AVAILABLE COPY

ARMY'S DISCLOSURE POSITION

DOCUMENT: INTERNAL GOVERNMENT COST ESTIMATES

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

Independent Government Estimates are classified at least "For Official Use Only," and as such are not disclosed to contractors.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

Army FAR Supplement 15.803(b)(90)(2) requires the above classification. FAR 5.401 requires Contracting Officers to ensure that information used to prepare such estimates is safeguarded.

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

Disclosure is not subject to discretion.

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

No changes are envisioned at this time.

BEST AVAILABLE COPY

ARMY'S DISCLOSURE POLICY

DOCUMENT: DRAFTS OF ABOVE DOCUMENTS

ALL DRAFTS ARE TREATED THE SAME AS THE FORMAL DOCUMENTS

BEST AVAILABLE COPY

ARMY'S DISCLOSURE POSITION

DOCUMENT: BIDDERS/OFFERORS LIST

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

These lists are freely disclosed.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

FAR 14.205-5 contains the guidance relevant to sealed bidding, and FAR 15. 403 contains the guidance relevant to negotiation.

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

Disclosure not subject to discretion.

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

No changes are envisioned at this time.

ARMY'S DISCLOSURE POSITION

DOCUMENT: PAST SUPPLIERS LIST

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

This list is freely disclosed as a matter of public record.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

There is no written guidance, other than Freedom of Information Act implementation.

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

Disclosure not subject to discretion.

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

No changes are envisioned at this time.

ARMY'S DISCLOSURE POSITION

DOCUMENT: BID INTENT LIST

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

Terminology unknown in Army procurement.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

ARMY'S DISCLOSURE POSITION

DOCUMENT: IDENTITIES OF ACTUAL BIDDERS

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

Under sealed bidding, the bids are opened publicly. Under negotiation procedures, neither the number nor identity of the offerors is available to the public. A contractor assisting in the evaluation may have access to the information, but only with the consent of the offeror. Such a contractor would be required to execute a Conflict of Interest Certification prior to disclosure.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

FAR 14.402 contains the guidance relevant to sealed bidding; FAR 15.413-1(a) pertains to negotiation generally, with the exception for contractor assistance at 15.413(f).

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

Disclosure not subject to discretion.

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

No changes are envisioned at this time.

ARMY'S DISCLOSURE POSITION

DOCUMENT: IDENTITIES OF BIDDERS IN COMPETITIVE RANGE

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

Other than notification to the disqualified offeror, contractor disclosure is not made.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

Notification to the disqualified offeror is required by FAR 15.609(c). Otherwise, the provisions of FAR 15.413-1(a) regarding nondisclosure of the number and identity of offerors are applicable here. (Copy at "Identities of Actual Bidders.")

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

Disclosure not subject to discretion.

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

No changes are envisioned at this time.

ARMY'S DISCLOSURE POSITION

DOCUMENT: SOURCE SELECTION ADVISORY COUNCIL MEMBERS

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

Source Selection Advisory Council (SSAC) membership is not disclosed to contractors. The information is not freely available within the Army; only direct participants may have access to the membership roster.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

Army Materiel Command FAR Supplement 15.612-100 and -101 discuss appointment of source selection personnel in detail. Army Regulation 70-1, paragraph 4-15(e)(5) mentions that membership is confidential, as does Army Materiel Command Pamphlet 715-3, volume 2, page 90. In addition, an overview of maintaining integrity in the source selection process was jointly issued by the Army Materiel Command and the Training and Doctrine Command in July 1988.

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

Disclosure is not subject to discretion.

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

No changes are envisioned at this time.

ARMY'S DISCLOSURE POSITION

DOCUMENT: SOURCE SELECTION EVALUATION BOARD MEMBERS

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

Source Selection Evaluation Board (SSEB) membership is not disclosed to contractors. The information is not freely available within the Army; only direct participants may have access to the membership roster.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

The same guidance material applicable to SSACs is applicable here.

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

Disclosure is not subject to discretion.

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

No changes are envisioned at this time.

ARMY'S DISCLOSURE POSITION

DOCUMENT: SOURCE SELECTION AUTHORITY

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

The Source Selection Authority in a formal source selection is not disclosed to contractors. The information is not freely available within the Army; only direct participants may have access to it.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

The same guidance material applicable to SSACs is applicable here.

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

Disclosure is not subject to discretion.

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

No changes are envisioned at this time.

ARMY'S DISCLOSURE POSITION

DOCUMENT: EVALUATION CRITERIA (INCLUDING NUMERICAL WEIGHTINGS, ASSESSMENT CRITERIA, KNOWN DISCRIMINATORS, AND OBJECTIVE STANDARDS)

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

While solicitations themselves must clearly state the factors which will be considered and their relative importance, the detailed evaluation methodology is not disclosed to contractors.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

FAR 15.605(e) provides the general guidance on this subject. Army Materiel Command Pamphlet 715-3, Volume 2, pages 19 and 89, discusses the subject in more detail.

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

Disclosure is not subject to discretion.

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

No changes are envisioned at this time.

ARMY'S DISCLOSURE POSITION

DOCUMENT: ACTUAL EVALUATION MATERIALS

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

Prior to award, no disclosure is made except as may be necessary to support negotiations. Disclosure of actual evaluations after award is very limited. Some information may be gained by a contractor under protest procedures or other legal proceeding.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

FAR 15.610(d) prohibits technical leveling and auctioning techniques, which inherently prohibits disclosure of offerors proposals and the Army's evaluation thereof. FAR 15.1003 places limits on what may be discussed at unsuccessful offeror debriefings. FAR 15.612(e) discusses safeguarding of this type of information generally.

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

What limited discretion is available is exercised by Contracting Officers. Criteria include what is necessary to support negotiating positions (pre-award) and the Freedom of Information Act (post-award.)

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

No changes are envisioned at this time.

ARMY'S DISCLOSURE POSITION

DOCUMENT: FOUO DOCUMENTS

1. DOES THE ARMY HAVE AN OFFICIAL POSITION AS TO WHETHER THIS TYPE OF DOCUMENT SHOULD BE DISCLOSED TO CONTRACTORS? IF SO, WHAT IS THE ARMY'S POSITION?

The Army's policy regarding the use of the "For Official Use Only" (FOUO) marking and the handling and disclosure of FOUO documents is set out in AR 340-17, Chapter 4. Paragraph 4-100 provides:

> Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA exemptions 2 through 9 (para 3-200) shall be considered as being For Official Use Only. No other material shall be considered or marked "For Official Use Only", and FOUO is not authorized as an anemic form of classification to protect national security interests.

The Army Federal Acquisition Regulation Supplement, (AFARS), Subpart 5.401 also provides guidance on the application of FOUO marking to procurement information.

Requests for procurement and planning information marked FOUO are processed under the Freedom of Information Act (FOIA) and AR 340-17 and usually involve the application of Exemptions 4 and/or 5.

Exemption 4 of the FOIA exempts from disclosure information ". . . containing trade secrets or commercial or financial information . . . from a person or organization outside the government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records."

Exemption 5 of the FOIA exempts from disclosure information regarding ". . . internal advice, recommendation and subjective evaluations . . . that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies . . . ."

Army policy is to disclose information unless it is exempted from release under one of the eight FOIA exemptions. Prior application of FOUO markings to procurement or planning information is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, Army policy requires that it be evaluated to determine whether, under current circumstances, any FOIA exemptions apply in withholding the record or portions of it. Notwithstanding application of an exemption the record may be released if it is determined that no governmental interest will be jeopardized by its release.

2. DOES THE ARMY HAVE ANY APPLICABLE RULES, REGULATIONS, INSTRUCTIONS OR OTHER WRITTEN GUIDANCE TO ITS OFFICIALS REGARDING THE DISCLOSURE OF THIS TYPE OF DOCUMENT? IF SO, PLEASE PROVIDE A COPY.

See #1 above.

3. IF DISCLOSURE IS LEFT TO THE DISCRETION OF INDIVIDUAL OFFICIALS WITHIN THE ARMY, WHICH OFFICIALS ARE RESPONSIBLE FOR THIS DECISION AND WHAT CRITERIA GUIDE THEIR DISCRETION?

Disclosure authority and criteria are contained in AR 340-17.

4. IS THE ARMY CURRENTLY REASSESSING ITS POSITION WITH REGARD TO THIS DOCUMENT? IF SO, STATE CURRENT POSITION AND CURRENT RULES OF THE ARMY AND NATURE OF CONTEMPLATED CHANGE.

No changes are envisioned at this time.

DEPARTMENT OF THE ARMY
OFFICE OF THE SECRETARY OF THE ARMY
WASHINGTON, DC 20310-1600

OFFICE, CHIEF OF
LEGISLATIVE LIAISON

FEB 12 [illegible]

Mr. Peter K. Levine
Counsel, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Levine:

This is in response to your oral request for more specific information concerning the action taken against Army officials discussed in the enclosed document.

An Army officer received a letter of reprimand from the Vice Chief of Staff of the Army for improperly releasing procurement information regarding contracts to be awarded. The officer allowed a representative of BDM Corporation to sit in on a briefing during which an Acquisition Plan was being discussed. (Mr. Jack Mitchell in your office requested and was provided a copy of the report of investigation in this case.) The officer has since retired from the Army.

An Army officer was indicted for conspiracy to defraud the United States and is pending trial in federal court in Tennessee for providing Acquisition Plans to a representative of Rockwell-Collins for a classified radio program. The officer was retired from the Army in a grade lower than he held at the time of the incident.

A National Guard officer has pleaded guilty and is awaiting sentencing in federal court in Pennsylvania for bribery in connection with his providing pre-award information to the EDN Company. He improperly provided funding information, statements of work, Acquisition Plan information on competition strategy, and advanced contracting officer and legal decisions on National Guard recruiting material. The officer has been removed from active status in the National Guard and the Virginia National Guard has begun proceedings to eliminate him from service.

Mr. Peter K. Levine

An enlisted soldier in the National Guard was charged in connection with his providing procurement information to the EDN Company in the previously mentioned case The enlisted man was the subordinate of the convicted officer. The soldier was tried and convicted by a military General Court-martial of making a false official statement and being derelict in the performance of his duty. He has subsequently retired.

I trust that this information is helpful. If I may be of further assistance, please let me know.

Sincerely,

Larry P. Brown
Lieutenant Colonel, Judge
Advocate General's Corps
Legislative Counsel

Enclosure

4. Other than any action that may have been taken in response to the "Ill Wind" investigation has the Army taken any disciplinary action against Army officials in the last five years because of improper disclosure of procurement or planning information to a private contractor? If so, in how many cases has such action been taken?

RESPONSE: The Army Crime Records Center reports of investigations are retrievable by indicating the offense code. The offense code that contains the above type reports is of a broad nature--not specifically coded as dealing with improper disclosure of procurement or planning information to a private contractor. The extraction of the information would require an extensive review of the files which was not possible within the time constraints of your request. However, since January 1986 a program of monitorship of certain cases was instituted that requires reporting to the DOD IG. The below listed cases are from that program:

An Army officer received a reprimand for improperly releasing procurement information regarding contracts to be awarded.

An Army officer was indicted for providing classified procurement information to a representative of a contractor.

A National Guard Bureau officer was convicted of receiving gratuities from a contractor in exchange for release of procurement information.

A National Guard enlisted member was courtmartialled for dereliction of duty for providing procurement information to a contractor.

These are the only cases we are aware of at this time, if you require further information it will take approximately one month to review the reports of investigation for the specific offenses.

The information requested on the Army disclosure policy of a number of specific types of documents has been compiled and provided as enclosure 4. The responses are of a general nature as the releasibility of the information, in many cases, is often dependent on the stage of the acquisition.

DEPARTMENT OF THE NAVY
OFFICE OF THE UNDER SECRETARY
WASHINGTON, D.C. 20350-1000

January 18, 1989

Mr. Peter Levine
Counsel
Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs
Hart Senate Office Building 442
Washington, D.C. 20510-6260

Dear Mr. Levine:

This is an initial response to Chairman Levin's letter of 16 December 1988 to Under Secretary Garrett, requesting the Navy's assistance in preparation for hearings on the issue of "inside information" and the appropriate scope of disclosure of procurement and planning information by the Defense Department to private contractors.

The complexity of the issues raised has necessitated extensive coordination within the Navy to be fully responsive to your needs. Responses are set forth below on an item-by-item basis to the extent that the information gathered to date allows.

A. Please list all existing rules and regulations of the Navy regarding the disclosure of procurement and planning information to private contractors.

Attachment A is a comprehensive list of the Navy's existing rules and regulations as requested. While some of the regulations cover the disclosure of information which may not normally be considered "procurement information," they have been included in an effort to be comprehensive.

B. Does the Navy believe that existing rules and regulations give adequate guidance to Navy officials and private contractors and consultants as to what types of information may and may not be disclosed?

We believe that the existing rules and regulations are substantively adequate and, taken together, provide adequate guidance. As the listing at Attachment A demonstrates, rules and regulations affecting disclosure of acquisition information appear in a variety of publications originated at varying levels of command. At the Under Secretary's direction, the Naval

Inspector General has recently completed a review of our training of acquisition personnel in standards of conduct and the safeguarding of acquisition information, and has recommended, among other things, development and implementation of a uniform training curriculum throughout the Department. We plan to strengthen our program for safeguarding acquisition information by implementing the Inspector General's recommendations.

C. Has the Navy undertaken any review of its document disclosure policies and practices in light of the "Ill Wind" investigation? If so, please outline the steps that have been taken and the additional steps that are planned to complete this review.

In addition to the Naval Inspector General review of training issues discussed above, the Department of the Navy Procurement Task Force has examined a number of specific document disclosure issues in support of the United States Attorney's Office in connection with the "Ill Wind" investigation. Such support is ongoing, and it would be inappropriate to comment further regarding such requests. The DON Task Force has also reviewed aspects of current policy in responding to requests for information from the House and Senate Armed Services Committees. One such package provided the Senate Armed Services Committee in September 1988 is provided at Attachment B. Implementation of the Naval Inspector General's recommendation for development of a uniform training curriculum will, of course, require full review of current rules, regulations, and policies. Finally, we are also participating in the Department of Defense's ongoing review of current policies in this area.

D. Other than any action that may have been taken in response to the "Ill Wind" investigation has the Navy taken any disciplinary action against Navy officials in the last five years because of improper disclosure of procurement or planning information to a private contractor? If so, in how many cases has such action been taken?

Data responsive to this request is being prepared by the Naval Investigative Service, Naval Inspector General, and our principal acquisition commands. None of these organizations maintain a data base permitting ready identification of such cases. We are gathering and reviewing data from each, and will forward a final response to you by January 27.

E-G. Questions E, F, and G requested the Navy's official position concerning the disclosure of a large number of specific types of documents. The scope of your request has required us to refer portions of the list to our budgetary, requirements determination and acquisition communities for preparation of proposed responses. We have begun to receive and review these

proposed responses for preparation of a single Departmental answer, which we should be able to provide you not later than 27 January 1989.

Please call me at 694-5066 with any questions you may have.

Sincerely,

Chester Paul Beach, Jr.

Chester Paul Beach, Jr.
Special Assistant to the
Under Secretary

Attachments

ATTACHMENT A

DEPARTMENT OF THE NAVY

RULES AND REGULATIONS REGARDING

DISCLOSURE OF PROCUREMENT AND

PLANNING INFORMATION TO

PRIVATE CONTRACTORS

NAVY, SECRETARY OF THE NAVY AND
CHIEF OF NAVAL OPERATIONS

Navy Regulation 1115 (32 CFR Section 700.1115), "Control of Official Records."
Prohibits the withdrawal of official records and correspondence from files without proper authorization.

Navy Regulation 1116 (32 CFR Section 700.1116), "Disclosure and Publication of Information."
Provisions regarding disclosure of information by persons in the Department of the Navy, including prohibition against disclosure of classified information except as provided in the Department of the Navy Information Security Program Regulation.

Memorandum, Chief of Naval Material, "Policy Statement on Maintaining Strict Control Over Classified and Sensitive Government Information in Relationsnips with Contractors," 1 Aug 1984.
Reminder that providing certain information to contractors is in violation of regulations governing the use of inside information, preferential treatment to individual contractors, protection of internal procurement information, release of classified information, and conduct impairing the integrity of Government. Pertinent sections of the rules are attached to the memorandum.

Memorandum, Deputy Executive Director for Contracts and Business Management, Office of Naval Acquisition Support, "Leaks of Information During the Contracting Process," 15 Aug 1985.
Reiterating Chief of Naval Operations Memorandum of 1 Aug 1984, and requesting that addressees focus attention on existing internal controls and establish what additional controls may be required.

Memorandum, Assistant Secretary of the Navy (Shipbuilding and Logistics), "Acquisition Procedures - External Contacts," 4 Sep 1987.
Requires that addressees promptly inform the Assistant Secretary whenever there is any external pressure that would improperly favor or benefit any contractor or prospective contractor.

SECNAVINST 5370.2H, 24 Oct 84, Subj: Standards of Conduct and Government Ethics.
Prescribes required standards of ethical conduct governing all personnel in the Department of the Navy, places responsibility and accountability for ensuring compliance upon commanding officers and supervisors, publishes financial disclosure reporting requirements and procedures, sets forth conflict of interest statutes applicable to certain categories of both former and current naval personnel, and promulgates

bedrock standards of conduct as a concise statement of expected ethical behavior. Implements Ethics in Government Act of 1978 (P.L. 95-521, as amended by P.L. 96-19 and P.L. 96-28) and DoD Directive 5500.7. (Currently being updated)

SECNAVINST 3070.1A, 24 Jun 1985, Subj: Operations Security.
Establishes policy and assigns responsibilities for a Navy operations security program to control the content of information to be made public.

SECNAVINST 3900.35C, 31 July 1980, Subj: Dissemination of Department of Defense Technical Information.
Provides policy and assigns responsibilities for the management and dissemination of DoD technical information, including scientific information, which relates to research, development, engineering, test, evaluation, production, operation, use, and maintenance of munitions and other military supplies and equipment. Implements DoD Instruction 5200.21.

SECNAVINST 3900.43, 229 Dec 1983, Subj: Navy Scientific and Technical Information Program (STIP).
To establish policies of the Service Secretaries in implementing the STIP.

SECNAV NOTICE 3960, 3 Jul 1986, Subj: Policy for Public Release of Test and Evaluation Data.
To amplify Navy policy on the release of test and evaluation data to the public.

OPNAVINST 3960.10C, 15 Sep 1987, Subj: Test and Evaluation.
Policy for Navy test and evaluation.

SECNAVINST 4200.23A, 23 May 1972, Subj: Correspondence and Oral Communication With Contractors Concerning Department of the Navy Contractual Matters.
Provisions regarding proper communications with contractors, including provision that oral communications with commercial concerns involving substantive matters in connection with pending or prospective procurement actions must be conducted through the appropriate contracting officer.

SECNAVINST 4200.33, 14 July 1986, Subj: Selection of Contractual Sources for Department of the Navy Defense Systems.
Provides general policy and procedures for selection of contractors, including: requirement that extreme caution be used to avoid even the appearance of a conflict of interest through exposure or dissemination of proprietary or business data to contractor personnel in those cases where such personnel are performing in an advisory capacity; requirement that, when contractor personnel serve in an advisory capacity in the source selection process, prospective offerors be notified of that fact and provide written release consenting to the use of the contractor personnel; requirement that Source Selection Plans include procedures for obtaining from participants in the

selection process the appropriate financial interest reports and nondisclosure of information statements and a plan for obtaining adequate security facilities; provision that the duties and responsibilities of the Source Selection Authority (SSA) include ensuring that the source selection process is conducted properly and that the SSA is the sole authority to authorize release of source selection data and information. Implements DoD Directive 4105.62.

NAVMATINST 4200.55, 27 Feb 1985, Subj: Competitive Acquisitions.

States that it is the policy of the Department of the Navy that each procuring activity involved in the acquisition process shall acquire all goods and services on a competitive basis to the maximum extent practicable. Implements DoD Directive 4245.9.

SECNAVINST 4205.5, 18 April 1988, Subj: Contracting Officer's Technical Representative (COTR).

Provides guidance to Navy contracting and technical personnel concerning the duties, responsibilities, and limitations of the COTR. Reemphasizes that COTRs must maintain arms-length relationships with contractors, to help ensure that services which are contractually "non-personal," remain so throughout contract performance.

NAVMATINST 4330.37, 25 Mar 1974, Subj: Should-Cost.

To provide guidance to procuring activities with respect to the nature and use of should-cost studies as one important method or approach to the determination of reasonable pricing of Navy contracts.

OPNAVNOTE 5510, 10 May 1986 (Canc: May 87), Subj: Withholding of Unclassified Technical Data From Public Disclosure.

Provides additional guidance on the control of unclassified technical data.

OPNAVNOTE 5510, 3 June 1986 (Canc frp: Mar 87), Subj: Safeguarding Department of the Navy (DON) Information By DON Personnel.

Reiterates DON policy on unauthorized disclosure of official information.

OPNAVNOTE 5510, 3 Sep 1987 (Canc frp: Jun 88), Subj: Changes to the Department of the Navy (DON) Information and Personnel Security Program.

Summarizes forthcoming changes to OPNAVINST 5510.1G.

OPNAVINST 5510.1H, 29 Apr 1988, Subj: Department of the Navy Information and Personnel Security Program Regulation.

Provides guidance and regulations concerning the classifying and safeguarding of classified information.

SECNAVINST 5510.25A, 1 July 1975, Subj: Security Review of Department of the Navy Information.
Sets policy and assigns responsibility for the security review of all Navy matters subject to public release.

SECNAVINST 5510.33, 23 July 1982, Subj: Protection of Classified National Security Council and Intelligence Information.
Classified NSC and intelligence information shall be disseminated within the DON to the absolute minimum number of individuals consistent with operating requirements. Any unauthorized disclosure of classified NSC or intelligence information shall be fully investigated and responsible individuals appropriately disciplined. Implements DoD Instruction 5230.21.

OPNAVINST 5510.60K, 29 July 1986, Subj: Information and Personnel Security Regulations for Offices Under the Cognizance of the Chief of Naval Operations.
Provides guidance for the protection of classified information and materials.

OPNAVINST 5510.158A, 10 Dec 1984, Subj: Security Review Guide for Congressional Matters.
Provides guidance and procedures for the security review of Navy information prepared for presentation to, or publication by, the Congress.

OPNAVINST 5510.161, 29 July 1985, Subj: Withholding of Unclassified Technical Data From Public Disclosure.
Assigns responsibilities, prescribes procedures and issues policy concerning the control of unclassified technical data. Implements DoD Directive 5230.25.

OPNAVINST 5513.1C, 8 Aug 1983, Subj: Department of the Navy Security Classification Guidance.
Assigns responsibilities and establishes procedures for promulgating security classification guidance for Navy classified systems, plans, programs, or projects.

SECNAVINST 5720.42D, 4 Dec 1987, Department of the Navy Freedom of Information Act (FOIA) Program.
Provides policies and procedures governing disclosure of agency records under the FOIA.

SECNAVINST 5720.44A, 3 Jun 1987, Subj: Department of Navy Public Affairs and Policy Regulations.
To provide policy for carrying out Public Affairs and internal relations within the Navy.

SECNAVINST 5760.4B, 22 Dec 1972, Subj: Participation of Department of the Navy Components and Personnel in Activities of Private Associations.

Establishes policies governing membership and participation of personnel in the activities of private or nongovernmental organizations, societies, or associations, including technical and professional societies. Implements DoD Directive 5500.2.

SECNAVINST 5820.8, 11 Aug 1987, Subj: Release of Official Information for Litigation Purposes and Testimony by Department of the Navy Personnel.

Establishes policy, assigns responsibilities and prescribes procedures for releasing official information for litigation purposes and providing testimony by Navy personnel for litigation purposes. Implements DoD Directive 5405.2.

SECNAVINST 7043.6, 3 Oct 1986, Subj: Contract Award Reporting Requirements under Title 10 Untied States Code, Section 139.

Prescribes procedures and reporting requirements under 10 U.S.C. § 139, as amended, which requires the submission of an annual written report and a supplemental report to the Congress regarding the procurement of weapon systems.

SECNAVINST 7700.5E, 11 Jan 1984, Subj: Selected Acquisition Reports (SARs).

Assigns responsibilities and provides procedures for the SARs, which provide top level managers with a chronological history of the production and development of designated acquisition programs. Implements FY 1983 Defense Authorization Act (P.L. 97-252 of 8 Sep 1982) and DoD Instruction 7000.3.

NAVY ACQUISITION REGULATIONS SUPPLEMENT

NARSUP Subpart 1.6, Contracting Authority and Responsibility.
Designates responsibilities within the Navy for procurement functions. Requires OGC legal review of all contracts to be entered into by any contracting activity. Sets out business clearance requirements to be met before Navy Contracting Officers may enter into contracts. Provides for review and oversight of business aspects of proposed contractual actions, to include review of proposed sole source acquisitions, higher-dollar acquisitions, and support service contracts. Provides specific direction and guidance concerning documentation of events in each competitive acquisition, and prohibits communications to offerors as to their competitive standings, prior to approval of business clearance. Requires ASN (S&L) concurrence prior to award of a contract valued at $50 million or more.

NARSUP Part 3, Improper Business Practices and Personal Conflicts of Interest.
Paragrapn 3.203, "Reporting Suspected Violations of the Gratuities Clause," sets out requirements and procedures for reporting, investigating, and pursuing Government remedies where a contractor or agent is suspected of offering or giving a gratuity to a Government officer or employee, with a view toward securing a Navy contract, or securing favorable treatment with respect to a contract.

Paragraph 3.590, "Fraud in connection with contracting and property disposal," affirms the need for safeguards against commission of fraud in contracting for and disposing of government property. Sets out procedures for contracting activities to follow, including periodic reviews of selected aspects of contracting and property disposal operations. Requires heads of contracting activities to ensure that all personnel fully understand the distinctions that have been drawn between proper and improper standards of conduct as defined in SECNAVINST 5370.2 series. Requires forthright cooperation with the FBI and Naval Investigative Service regarding inquiries concerning suspected wrong-doing or abuse of authority.

Paragraph 3.591, "Assignment of individual functions," limits single individuals in contracting activities to performance of only one of three separate functions: (1) requirements initiation; (2) contract award, and (3) receipt, inspection, and acceptance of supplies or services.

NARSUP Subpart 3.6, Contracts with Government Employees.
Establishes Navy Heads of Contracting Activities (HCAs) as authorities for granting exceptions to FAR Subpart 3.6 policy against awarding contracts to firms owned or controlled by Government employees. Requires reports to ASN (S&L).

NARSUP Subpart 5.4, Release of Information.
Paragraph 5.404, "Release of long-range acquisition estimates," requires Navy HCA approval prior to release of long-range acquisition estimates, pursuant to FAR 5.404, which conditions such released on use of proper agency security channels, and on wide publication of the release to all parties simultaneously.

NARSUP Part 7, Acquisition Planning.
Reaffirms that all personnel participating in the acquisition process must be aware of their responsibilities for, among other things: (1) validating requirements, especially proposed non-competitive acquisitions, acquisitions of consulting and related services, unsolicited proposals, and unplanned or unprogrammed supplies or services; (2) maintaining the integrity of the contracting process, especially by means of adequate competition and appropriate cost or price analysis; and (3) compliance with prescribed policies, regulations, and procedures.

Paragraph 7.105, "Contents of Written Acquisition Plans," recommends that APs include, in addition to the information required by FAR and DFARS 7.105, assurances that the proposed acquisition does not include "goldplating." Requires supporting information whenever other than full and open competition is planned. Directs that APs include discussion of any plans to acquire, ensure appropriate marking of and validate technical data related to the item or service to be acquired.

NARSUP Part 15, Contracting By Negotiation.
Paragraph 15.411, "Receipt of Proposals and Quotations," requires Navy contracting activities to safeguard bids and proposals received, including holding competitive proposals in central locked storage where facilities permit, until after the established date for receipt of offers.

NAVAL SEA SYSTEMS COMMAND

SEA02INST 4140.2A, 18 Dec 1984, Subj: Requests for Review and Evaluation of Pricing Proposals Based on Cost and Pricing Data Submitted by the Contractor.

Provides guidelines for requesting the review and evaluation of pricing proposals.

NAVSEA Memorandum 4200, NAVSEA Source Selection Guide, 15 Feb 1984.

Provides guidance to the Program Manager, his staff, and others involved in the source selection process. Establishes the following rules of conduct for evaluators: (1) direct all attempted communication by offerors' representatives to the Contracting Officer; (2) advise members of the permanent office not to divulge your participation in the source selection action to casual callers; (3) do not discuss proposals, findings, etc., among source selection participants outside of the evaluation site; (4) do not socialize with any offeror or proposed subcontractor or vendor who may have a potential interest in the award; and, (5) do not discuss any part of the source selection with anyone, even after announcement of a winning contractor. The Guide also states that the sensitivity of competitive source selection dictates absolute security throughout the entire proceedings, including the actions of all personnel associated with the evaluation and administration of proposals, the deliberations of the various boards, and presentations to higher authority. Disclosure of any source selection information can be damaging to the Navy's interests, both in terms of (1) criticism resulting from failure to conduct business affairs properly and (2) the loss of the competitive environment so essential to the source selection process. Implements DoD Directive 4103.62 and NAVMATINST 4200.19.

NAVSEAINST 4200.4B, 12 Feb 1985, Subj: Communication with Contractors and Prospective Contractors.

Directs attention to regulations governing disclosure of information to prospective contractors; prescribes policy governing communications with contractors when termination or suspension of work is contemplated; and emphasizes the safeguarding and confidentiality of procurement information.

NAVSEAINSTR 4200.10, 27 April 1979, Subj: Source Evaluation and Selection for Other Than Major Defense Systems.

Provides that a policy of impartiality be vigorously followed. Rules which assure equal treatment of all competitors must be strictly observed in all phases of the evaluation process.

SEA02INST 4230.1, 2 July 1974, Subj: Canadian Purchases and Review of Contract Proposals for Possible Foreign Disclosure.

Due to prohibitions against the release of certain classified information outside the United States, provides that

no offer on a procurement requiring contractor access to classified information shall be furnished to the Canadian Commercial Corporation without authorization from the Foreign Disclosures Branch of the Security Division.

SEA02INST 4255.1B, 15 Oct 1979, Subj: Receipt and Recording of Competitive Negotiated Proposals.

Provides that proposals will be retained in locked storage under the control of SEA 0215 until the date set for opening.

SEA02INST 4265.1A, 17 June 1983, Subj: Requests for In-House Technical Advisory Report (Recommendations of Award).

Provides that, in order to maintain the integrity of the negotiation procurement procedure, as well as to insure the equitable treatment of all interested suppliers, prices, or the conditions of any individual contractor's proposal shall not be divulged outside the Department of Defense prior to making award. Further, no information contained in any proposal or quotation or regarding the identity of the offerors shall be made available to the public or to anyone within the government not having a legitimate interest therein. Finally, discussions with prospective contractors regarding the procurement shall be conducted only by the assigned negotiator or his superiors having contractual authority or by others specifically authorized by the negotiator or his superiors.

NAVSEAINST 4295.1B, 16 Sep 1988, Subj: Control of Contractor Cost Data.

Provides instructions for the control of access to and release of contractor submitted cost data. Defines business sensitive information as data submitted by a contractor which may be likely to cause substantial competitive harm if released, or which may impair the Government's ability to obtain necessary information in the future. To assure protection against possible compromise or misuse of cost data requires limiting access to business sensitive data to individuals with a legitimate need to use it in the acquisition process.

NAVSEAINST 4295.2A, 28 Jun 85, Subj: Certification - Conflict of Interest, Non-Disclosure of Information.

Provides that all data and information (both pre award and post award) be handled with the utmost discretion to avoid compromising the source selection process. Emphasizes the need for Navy personnel to comply with the referenced conflict of interest, non-disclosure of information regulations. Requires personnel involved in the source selection process to execute a conflict of interest, non-disclosure of information certification.

SEA02INST 4295.2B, 29 Jun 1979, Subj: Press Release of Contractual Awards of $3,000,000 or More.

Updates procedures for handling press released relative to the announcement of newly executed Headquarters, NAVSEA

contracts. letter contracts. modifications and order valued at $3,000,000 or more.

SEA02INST 4295.3A, 15 April 1983, Subj: Procedures for Notifying Unsuccessful Offerors.
Establishes procedures for notifying unsuccessful offerors for (i) formally advertised procurements; (ii) competitive negotiated procurements; and. (iii) procurements involving small business set-asides to be placed through conventional negotiation.

SEA02INST 4295.4A, 16 July 1981, Subj: Publicizing Proposed Procurements.
Notes that the principal purpose for publication is to notify industry of prime and subcontract opportunities and to increase competition. The publishing of this information is in the interest of the DoD because it helps dispel the erroneous view that acquisitions are frequently negotiated with selected suppliers without ample justification, and without notice to other interested firms.

SEA02INST 5050.1A, 15 Nov 1979, Subj: Visitor Control System
Provides procedures for visitor registration and control, including the use of badges for admittance to any office of the Contracts Directorate and provide for a record of each such visit.

SEA02INST 5510.1D, 14 Aug 1980, Subj: Security Procedures
Provides new security procedures and initiates security procedures for non working hours.

COMNAVSEA Memorandum 002835, 5 Aug 1988, Subj: Contractor Involvement in the Procurement Process.
Provides policy and guidelines for the use of contractor services in the procurement process at the Naval Sea Systems Command.

NAVAL AIR SYSTEMS COMMAND

NAVAIRINST 4200.27A, 12 Feb 1985; Subj: SELECTION OF CONTRACTUAL SOURCES FOR LESS-THAN-MAJOR COMPETITIVE ACQUISITIONS.

To establish policy and procedures for selection of contractual sources for less-than-major competitive acquisitions within Naval Air Systems Command Headquarters.

NAVAIRINST 4200.7B, 13 Jul 1982; Subj: CORRESPONDENCE AND ORAL COMMUNICATIONS WITH CONTRACTORS CONTRACTORS' REPRESENTATIVES, AND FIELD CONTRACT ADMINISTRATORS.

This instruction establishes procedures to be followed with respect to (a) correspondence originating in the Naval Air Systems Command Headquarters with prospective contractors, contractors' representatives, and Contract Administration Offices designated to administer Naval Air Systems Command contracts, and (b) oral communications between NAVAIR and prospective contractors and/or contractor personnel. It is designed to ensure that all NAVAIR communications which may affect rights and obligations under NAVAIR contracts shall be suitably reviewed and released. Authorized contractual commitments are made only by duly designated Contracting Officer or a Contracting Officer's Technical Representative. Other personnel are cautioned not to take any action which can be construed by a contractor as authority to commence or alter performance.

NAVAIRINST 4200.17B, 27 May 1986; Subj: DEBRIEFING OF UNSUCCESSFUL OFFERORS IN NEGOTIATED PROCUREMENTS.

To assign responsibilities and set forth procurements procedures within the Naval Air Systems Headquarters with respect to the debriefing of unsuccessful offerors after award, in negotiated procurements.

NAVAIRINST 4200.24A, 24 Apr 1986; Subj: SELECTION OF CONTRACTUAL SOURCES FOR MAJOR AIRCRAFT AND MISSILE SYSTEMS ACQUISITIONS.

To set forth the Naval Air Systems Command Headquarters procedures and responsibilities for the selection of contractual sources for major aircraft and missile weapon system acquisitions.

NAVAIRINST 5370.8, 2 Dec 1968; Subj: STANDARDS OF CONDUCT.

This instruction directs attention to current directives on the subject matter and updates procedures to ensure that personnel of NAVAIR are familiar initially with and thereafter reminded periodically of the standards of conduct set forth in SECNAVINST 5370.2E of 29 Nov 1967 and NAVAIRINST 5370.2 of 20 Dec 1967.

NAVAIRMEMORANDUM 4200 Ser AIR 00C/MAO/0823, 1 Sep 1988, Subj: Use of Contractor Support in the Procurement Process.

To provide policy and guidelines for the use of contractor services in the procurement process at Naval Air Systems Command.

SPACE & NAVAL WARFARE (SPAWAR) SYSTEMS COMMAND

SPAWARINST 4200.26,22 APR 88, Subj: Procedures for Effective Acquisition of SPAWAR Systems, Equipment, and Support Services.

Establishes uniform, integrated acquisition guidance for SPAWARSYSCOM personnel, applicable from acquisition phase throughout the program lifecycle. Includes rules of conduct for government evaluators to observe during competitive source selection process.

SPAWAR Office of Counsel "Standards of Conduct" Training Outline.

This is an outline of training in Standards of Conduct given by SPAWAR Office of Counsel in March 1988 at one of SPAWAR's field activities, NAVELEX Charleston. It was the basis for training at other SPAWAR field activities in CY 88 summer/fall and at SPAWAR headquarters in the fall of 1988.

SPAWAR Notice 4200, 7 Dec 1988; Subj: USE OF CONTRACTOR SUPPORT IN THE PROCUREMENT PROCESS.

This notice establishes policy and assigns responsibility for managing the use of contractor support services in the procurement process.

SPACE AND NAVAL WARFARE SYSTEMS COMMAND SECURITY MANUAL, 17 Feb 1987, Exhibit 3-5; Subj: PROCEDURES FOR ASSIGNING DISTRIBUITON STATEMENTS ON TECHNICAL DOCUMENTS.

This manual section prescribes that the offices that generate or are responsible for technical documents must determine the documents' distribution limitations and mark them appropriately. It explains when the various distribution statements should be used on technical documents.

NAVAL SUPPLY SYSTEMS COMMAND

Memorandum, Commander, Naval Supply Systems Command (NAVSUP), 14 Aug 1988, Subj: Acquisition Procedures - External Contacts and Non-Disclosure Requirements.

Reiterating Assistant Secretary of the Navy (Shipbuilding and Logistics) direction that no employee is authorized to take any action in response to external pressuring, regardless of the source, which would improperly favor or benefit any contractor or prospective contractor. Also stresses the importance of adhering to the acquisition procedures in the solicitation, award, and administration of Department of Defense contracts, as well as the avoidance of potential conflicts of interest. Reiterates the requirement that all individuals participating in the evaluation of contractor proposals in a competitive acquisition are to complete a "Conflict of Interest and Non-Disclosure Statement," and include such in the contract file.

Memorandum, Commander, Naval Supply Systems Command (NAVSUP), 28 Aug 1988, Subj: Acquisition Procedures - External Contacts and Non-Disclosure Requirements.

Reiterates Commander, NAVSUP requirement that individuals participating in the evaluation of contractor proposals in competitive acquisitions, over $25,000, involving the review/evaluation of technical proposals are required to complete a "Conflict of Interest and Non-Disclosure Statement" (in addition to contracting personnel).

Memorandum, Commander, Naval Supply Systems Command (NAVSUP), 24 Oct 1988, Subj: Protection of Business Sensitive Information.

Reminds all Navy Field Contracting System personnel of the need to protect the release of business sensitive information. Provides a definition of what constitutes "Business Sensitive Information" and stipulates the necessity for additional precautions to protect such information.

Navy Supply Acquisition Regulation Supplement (NAVSUP Naval Supply Systems Command (NAVSUP) Instruction 4200.79A, 29 Mar 1988, Subj: Competitive Source Evaluation and Selection For Other than Major Defense Systems Acquisitions.

Establisnes procedures and responsibilities concerning the evaluation and selection of sources for competitive acquisitions.

Naval Regional Contracting Center (NRCC) Washington, "Customer Handbook," Chapter VII.7.

Details the rules governing the conduct of Government employees, known as the standards of conduct, and in paragraph (7) advises that Government employees may not provide "inside information" to a contractor because of the unfair competitive advantage given over that contractor's competitors.

Naval Air Development Development Center (NADC) "Procurement Guide," Part 7.2, "Communication with Contractors."

Advises that all Government employees must observe strict guidelines concerning the information communicated to prospective, unsuccessful and successful contractors before, during and after the solicitation period.

MARINE CORPS

Contracts Division Order 4200.1B, 15 Jul 1986, Subj: Business Clearance. Establishes the composition, responsibilities, and procedures of the Contracts Division Review Board, and provides instructions for preparing and processing business clearance memoranda. Provides that Board members shall take any action necessary to prevent disclosure of any information contained in Board cases distributed to them for review.

Contracts Division Order 4200.5, 16 Mar 1987, Subj: Procedures Governing Advance Notification of Contract Awards and Modifications Valued at $3,000,000 or More. Provides internal procedures for preparing announcements of contract awards and modifications valued at $3,000,000 or more, and that no public release (including advice to the prospective contractor) may be made until such time as designated by CHINFO. Provides that all necessary precautions shall be taken to prevent the unauthorized disclosure of information prior to the designated release time.

Contracts Division Order 4295.1D, 15 Jul 1986, Subj: Processing of Bids/Proposals Received in Contracts Division. Establisnes procedures for handling and safeguarding bids, proposals, quotations and modifications thereto received by the Contracts Division. Provides that bids, proposals, and quotations are to be held in a locked storage place until bid opening or date established for receipt of proposals. Also provides that bid samples shall be kept in a locked file when not being evaluated. Further provides that opened proposals/quotations shall be kept in a locked file drawer and shall not be released to the public or to anyone in the Government not having a legitimate interest. Provides that technical evaluation reports, pricing/audit reports, pre-award surveys, business clearances, and any other material that could disclose procurement sensitive information shall be secured in a locked file until after contract award. Also provides that after receipt of proposals or quotations, no information in any proposal, or information regarding the number or identify of the offerors, shall be made available to the public, or to anyone within the Government not having an official need-to-know.

Contracts Division Order 5050.1B, 30 Jul 1982, Subj: Contracts Division Visitor Log Book. Establishes procedures to control access of contractors' representatives within the Installation and Logistics (I&L) Department work/office areas, and procedures to maintain a historical record of visits by such representatives. Provides procedures to prevent unannounced appearances of contractors' representatives and the possible inadvertent disclosure of information which might jeopardize the position of the Government or any other prospective contractors. Provides that prior to receiving a visitor Contracts Division personnel shall take appropriate steps to safeguard information which may be exposed in the area to be visited, and to avoid

unintentional disclosure of information to visitors who might overhear discussions.

Contracts Division Order 5370.1D, 30 Jul 1982. Subj: Standards of Conduct. Reemphasizes the standards of conduct governing personnel of the Contracts Division in their dealings with contractors on behalf of the USMC. Requires all personnel receive indoctrination on their individual responsibilities, including the need to maintain strict impartiality and avoid financial conflicts of interest.

Installations & Logistics Order 5720.1A, 1 Dec 1983; Subj: I&L Department Freedom of Information Act Program. Sets forth the policy and procedures for handling FOIA requests within the I&L Department on a timely basis.

Headquarters Order P4200.3, 2 Oct 1987; Subj: Source Selection Manual. Assigns duties and establishes procedures for planning and conducting technical and cost evaluations of contractor proposals in the source selection process. Emphasizes the need of all participants to avoid conflicts of interest or the appearance thereof. States that the security of the SSEB and cost evaluation panel proceedings is of paramount importance and admonishes all participants to safeguard both offeror-generated and government-generated information.

Headquarters Order 42801b, 12 May 1987; Subj: Unsolicited Proposals. Contains specific language prohibiting the use and disclosure of data from unsolicited proposals as directed in FAR 15.508.

DEPARTMENT OF THE NAVY
OFFICE OF THE UNDER SECRETARY
WASHINGTON D C 20350-1000

MEMORANDUM

From: Susan P. Raps, DONTF

To: Paul Beach, Special Assistant to the Under Secretary

Subj: RESPONSE TO SASC REQUEST FOR DOCUMENTS PERTAINING TO RELEASABILITY OF INFORMATION

Encl (1): Release of Acquisition Information Point Paper

Encl (2): FAR Citations Accompanying Release of Acquisition Information Paper

Encl (3): DOD Directive Citations Accompanying Release of Acquisition Information Point Paper

Encl (4): Government Protection of Contractor Proprietary Data Point Paper

Encl (5): FAR Citations Accompanying Government Protection of Proprietary Data Point Paper

Encl (6): SECNAVINST and DoD Directive Citations Accompanying Government Protection of Proprietary Data Point Paper

1. The above enclosures are meant to respond to the Senate Armed Services Committee request for documentation pertaining to the releasability of information. The two point papers, Enclosures (1) and (4) are each accompanied by copies of the appropriate FAR, DOD Directive, and SECNAVINST citations.

2. If I can be of further assistance to you on this matter, please let me know.

RELEASE OF ACQUISITION INFORMATION

The regulations permit the release of certain types of information prior to and following the issuance of a solicitation or invitation for bid in the interest of increasing competition, broadening industry participation, and assisting small business concerns. The regulations are equally clear, however, that whatever is released must be widely disseminated to as many prospective offerors and bidders as possible so that the Government does not give one offeror or bidder a competitive advantage over the others. The following is an overview of the types of information that may and may not be released prior to and following the issuance of a solicitation.

I. Release of Information Prior to Issuance of a Solicitation

A. Publication in Commerce Business Daily

The usual and preferred method for releasing pre-solicitation or invitation information is through publication in the Commerce Business Daily ("CBD") which ensures that information is publicized as widely as practicable to all parties simultaneously. Subpart 5.2 of the Federal Acquisition Regulation ("FAR") requires Contracting Officers, for acquisitions over specified dollar thresholds, to announce in

the CBD the type of supplies or services required, the opening and closing date for receipt of offers and bids, the point of contact within the Government for questions concerning the acquisition, and the estimated award dollar amount. The Contracting Officer may also place in the CBD information regarding business fairs, pre-bid/pre-proposal conferences, meetings, and the availability of draft solicitation and specifications.

If considered to be in the Government's interest, FAR 5.206 permits Contracting Officers to publicize subcontract opportunities by publishing in the CBD the names and addresses of firms to which solicitations will be issued, and in two step procurements, a listing of those companies that have submitted acceptable technical proposals in the first step of the competition.

Pursuant to FAR 5.404, in order to assist industry planning and to locate additional sources of supply, the Contracting Officer may also publicize estimates of unclassified long range acquisition requirements. The Contracting Officer however, must determine that this will not encourage undesirable business practices, such as collusive bidding, and will not indicate the existence of potential mobilization of the industry. The long range acquisition plans would contain the name and description of the item, the estimated quantity to be acquired by calendar year, fiscal year or other period, and may also state the number

or units last acquired, unit price, and name of last supplier. More specific information regarding the proposed acquisition would not be released until after the formal announcement of the procurement appeared in the CBD.

FAR 5.401(a), however, precludes the Contracting Officer from disclosing information obtained from potential contractors and others outside the Government for use in preparing Government estimates. FAR 5.401(b) also states that while the Contracting Officer must make available the maximum information to the public, he may not release plans that provide undue or discriminatory advantage to private or personal interests, information received in confidence from an offeror, information otherwise requiring protection under the Freedom of Information Act or Privacy Act, or information pertaining to internal agency communications. FAR 5.401(c) places these restrictions on all Government personnel who participate, directly or indirectly in any stage of the acquisition cycle.

B. Sealed Bids

FAR 14.101(b) requires that invitations for bid packages containing the statement of work and other Government requirements be distributed to prospective bidders or posted in public places a sufficient time before public bid opening to enable prospective bidders to prepare and submit bids.

In instances where the bid set or solicitation mailing list is lengthy, FAR 14.205-4(c) permits the use of pre-solicitation notices. The notice (1) specifies the final date for receipt of request for a complete bid set; (2) briefly describes the requirement and furnishes other essential information to enable concerns to determine whether they have an interest in the invitation for bids; and (3) instructs concerns if they do not intend to submit a bid to advise the Government if future invitations for similar items are desired. The regulations state that drawings, plans and specifications normally will not be furnished with the pre-solicitation notice.

FAR 14.205-5 permits the Government to release the central and local solicitation mailing lists established under the regulations in response to written requests made by the general public. If the invitation for bid is for a construction contract, trade journals, prospective subcontractors, material suppliers, bidders and others with a bona fide interest will be supplied upon request with a listing of all prospective bidders furnished copies of the plans and specifications.

Prior to issuance of the invitation for bid, FAR 14.211(a) clearly states that no information concerning the proposed acquisition may be released outside the Government except for the pre-solicitation notices defined in FAR 4.205-4(c) or long range acquisition estimates prepared in accordance with FAR 5.404, or synopses published in the CBD pursuant to FAR 5.201.

Moreover, within the Government such information should be restricted to those having a legitimate interest. It is further required that releases of information will be made to all prospective bidders and as nearly as possible at the same time, so that one prospective bidder will not be given unfair advantage over another.

C. Negotiated Procurements

FAR 15.402(b) mandates that Contracting Officers furnish identical information concerning a proposed acquisition to all prospective contractors, and that Government personnel should not provide the advantage of advance knowledge concerning a future solicitation to any prospective contractor, except for the very limited exceptions described in FAR 5.404 or elsewhere in Part 15 of the FAR.

FAR 15.404 does permit the use of pre-solicitation notices and conferences as preliminary steps in negotiated acquisitions in order to develop or identify interested sources, request preliminary information based on a general description of the supplies or services involved, explain complicated specifications and requirements to interested sources, and aid prospective offerors in later submitting proposals without undue expenditure of effort, time and money. However, FAR 15.404(b) requires that when pre-solicitation notices are used, the Contracting Officer shall prepare and issue the notice to all

potential sources and shall synopsize the notice in accordance with Subpart 5.2. Moreover, the information contained in the pre-solicitation notice is limited to a definition of what information will be required in offerors' proposals, an indication of whether the pre-solicitation notice will be followed by a conference and a formal solicitation, and a request for an expression of interest by a specific date. In complex acquisitions, the pre-solicitation notice may also request information pertaining to management, engineering, and production capabilities. However, as stated in FAR 15.404(b)(3), detailed drawings, specifications or plans will not normally be included with a pre-solicitation notice.

After issuance of the pre-solicitation notice, a pre-solicitation conference may be convened, pursuant to FAR 15.404(c)(1) only when approved at a level higher than the Contracting Officer. The Contracting Officer must advise all firms responding to the pre-solicitation notice of the details of any pending pre-solicitation conference, and shall furnish copies of the solicitation to all organizations attending the conference, unless they decline to participate in the acquisition.

When information necessary for planning purposes cannot be obtained from potential sources by more economical and less formal means, FAR 15.405 permits the Contracting Officer to issue a solicitation for information and planning purposes. The

Contracting Officer must determine that the need for such a solicitation is justified, and this justification must be approved at a level higher than the Contracting Officer.

DOD Directive 4105.62, 9 September 1985, Subj: Selection of Contractual Sources for Major Defense Systems, encourages the use of draft Requests for Proposals in order to obtain feedback from prospective offerors. According to the instruction, draft Requests for Proposals should be as complete as possible, and include a statement of work, specifications, data requirements, evaluation criteria and general and specific provisions. Sufficient time should be allowed to permit prospective offerors to respond meaningfully.

D. Source Selection Information

In a competitive negotiated procurement, a source selection plan is prepared prior to the issuance of the solicitation. DOD Directive 4105.62, 9 September 1985, Subj: Selection of Contractual Sources for Major Defense Systems, recognizes that while it is prudent not to disclose the portion of the source selection plan describing the organization, membership and responsibilities of the source selection team, until after contract award, this part of the plan normally does not contain source selection sensitive information. However, the portion of the plan that identifies evaluation criteria and detailed procedures for proposal evaluation is source selection sensitive

information and must be protected from unauthorized disclosure to ensure the fairness and integrity of the source selection process.

In addition, while the relative importance of evaluation criteria will be indicated in the solicitation, the instruction requires that the numerical weights to be applied by the Source Selection Authority or Source Selection Advisory Council to the evaluation criteria will not be disclosed either to offerors or to evaluators other than the members of council, to preclude intentional or unintentional bias in proposals and evaluations.

II. Release of Information After Issuance of a Solicitation

B. Sealed Bidding

After issuance of the invitation for bids, FAR 14.211(b) restricts contact with prospective bidders to the Contracting Officer or superiors having contractual authority, or to others specifically authorized. It is required that such personnel not furnish any information to a prospective bidders that al[illegible] or together with other information may afford an advantage over others. However it is permitted to provide general information to one bidder if it is not prejudicial to the other prospective bidders to do so.

The FAR also provides that after the invitation for bids is issued, but prior to bid opening, the Government may hold a pre-bid conference. The DOD FAR Supplement, 14.207 states that such a pre-bid conference may be held only when approved at a level higher than the Contracting Officer, and that all interested parties should be invited to attend.

B. Negotiated Procurements

In complex negotiated procurements, FAR 15.409 permits the use of pre-proposal conferences prior to proposal submittal in order to explain or clarify complicated specifications or requirements. The Contracting Officer or a designated representative conducts the pre-proposal conference making sure to furnish all prospective offerors identical information concerning the acquisition. The Government should also make a complete record of the conference and promptly furnish a copy of that record to all prospective offerors.

After receipt of proposals, FAR 15.413-1 provides that no information contained in them or concerning the number or identity of offerors shall be made available to the public or to anyone in the Government not having a legitimate interest.

FAR 15.413-1(b) further requires that only the Contracting Officer, his superiors, or other authorized personnel may communicate with the offerors, and that information may not be

furnished to a prospective contractor if alone or together with other information, it may afford the prospective contractor an advantage over others. However general information that is not prejudicial to others may be furnished upon request.

Pursuant to FAR 15.612(d)(1), during the selection process, approval by the Source Selection Authority must be obtained prior to the release of any source selection data. In addition, Government personnel are forbidden to contact or visit a contractor regarding a proposal under source selection evaluation without the prior approval of the Source Selection Authority.

In addition, FAR 15.803 mandates that Government personnel may not disclose to an offeror or contractor any conclusions, recommendations or portions of administrative Contracting Officer or auditor reports regarding the offeror's or contractor's proposal without the concurrence of the Contracting Officer responsible for the negotiation.

III. Conclusion

As discussed above, the release of certain acquisition information appears highly regulated. It should be noted, however, that other portions of the regulations encourage informal contact with contractors. For example FAR 7.101 requires agencies to conduct market surveys which consist of

informal written or telephone contacts with industry prior to conducting an acquisition, and FAR 15.405 permits the issuance of an informational or planning solicitation only when information necessary for planning purposes cannot be obtained from potential sources by more economical and less formal means.

Yet, once the source selection process begins the FAR provisions limiting the release of acquisition information would apply. Government personnel who failed to comply may very possibly violate SECNAVINST 5370.2H, 24 October 1984, Subj: Standards of Conduct and Government Ethics, provisions which prohibit any action whether or not specifically prohibited that might result in or reasonably be expected to create the appearance of (1) using public office for private gain or giving preferable treatment to any person or entity, and which prohibit the use, either directly or indirectly, of inside information to further a private gain for themselves or others if that information is not generally available to the public and was obtained by reason of their DoD position.

PART 14--SEALED BIDDING
SUBPART 14.2--SOLICITATION OF BIDS

14.201 Preparation of Invitation for Bids.

14.201-2 Part I--The Schedule. When a DD Form 1423 is used to list technical data which is to be delivered under the contract in accordance with 27.475-1, it shall be designated as an exhibit and established, as such, in accordance with 4.7105.

14.201-6 Solicitation Provisions.
(70) The contracting officer shall insert the provision at 52.214-7001, Domestic Source Restriction, in all solicitations that are restricted to domestic sources under the authority of FAR 6.302-3.

14.202 General Rules for Solicitation of Bids.

14.202-1 Bidding Time.
(a) Policy. For potential sources in participating countries, see 25.7403(a); for sources in FMS/offset arrangement countries, see 25.7310(c)(2); and for sources in defense cooperation countries, see 25.7502.
(b) When requested by a source located in a participating country or a designated country as defined in Part 25, the contracting officer shall provide for a 45-day bidding period if this is consistent with the Government's requirements.

14.202-5 Descriptive Literature.
(d) Requirements of Invitation for Bids. When brand name or equal purchase descriptions are used, the requirements of FAR 14.202-5 are met by inserting in the invitation for bids the brand names provision at 52.210-7000.

14.205 Solicitation Mailing Lists.

14.205-1 Establishment of Lists.
(a) For special instructions relative to the establishment of a Research and Development Bidders Mailing List, see Supplement No. 4, "Procedures for Submission of Applications to be Placed on Research and Development Bidders Mailing Lists."

14.207 Pre-Bid Conference. A pre-bid conference may be used only when approved at a level higher than the contracting officer. All interested parties, including representatives from qualifying country sources, shall be invited to the pre-bid conference. (See 25.7403(a), 25.7310(c)(2), and 25.7502.)

when the acquisition strategy includes the solicitation of alternate proposals, offerers are encouraged to pursue innovative concepts and propose goals and thresholds different from those prescribed in the solicitation, if a more cost-effective solution to the Government's mission need can be demonstrated.

f. Tailoring

(1) Evaluation criteria must be tailored to the appropriate phase of a system acquisition. Solicitations typically may include: (a) an assessment of the extent to which the proposed system concept is expected to provide the capability to satisfy the mission need identified in the solicitation within the stated operational concept; (b) an assessment of technical and financial risk to design, produce, and operate the proposed system within schedule, cost, and other resource constraints; (c) an assessment of the degree to which the proposed system can be used satisfactorily in operations-considering such items as availability, reliability, maintainability, wartime usage rates, interoperability, transportability, safety, human factors, logistic supportability, and manpower and training requirements; (d) an assessment of the offeror's management, financial, technical, manufacturing, and other resources available or planned to develop and produce successfully the proposed system within schedule and resource constraints; (e) data rights for future competitive procurement, including high value spares; and (f) the realism of the offeror's contract and life cycle cost estimate, considering the scope of work to be performed and the degree of technical risk involved in the proposed system concept. The offeror's recent and relevant past performance (measured by such indicators as quality, timeliness, cost, schedule, operational effectiveness, and suitability) may be considered in assessing the probability of successful accomplishment of the proposed effort in a timely and cost-effective manner.

(2) Those specifications and standards identified for guidance during the demonstration and validation phase should be tailored in contract requirements for full scale development and, when priced production options are solicited, for initial production. For the production phase, the emphasis of the evaluation criteria typically will shift from an assessment of the technical soundness of the proposed system concept to more objective criteria regarding the achievement of performance, reliability, producibility, maintainability, supportability, schedule, and life cycle cost objectives.

g. In addition to the evaluation criteria, solicitations should provide guidance to offerors regarding proposal page limitations, number of copies required, and the structure of proposals into separate volumes on technical, fabrication, cost, management, and other criteria to facilitate the evaluation.

h. The use of draft Requests for Proposal (RFPs) is encouraged to obtain feedback from prospective offerors. Draft RFPs should be as complete as possible, including a statement of work, specifications, data requirements, evaluation criteria, and general and specific provisions. Sufficient time should be allowed to permit prospective offerors to respond meaningfully.

require access to proposal information to fulfill their responsibilities (see DoD Directive 5000.3 (reference (h)) and DoD Directive 5000.4 (reference (i)). Independent evaluators who assess specific areas, such as cost or test and evaluation proposals, and who have access to proposal information, are bound by the same rules regarding conflict of interest and information disclosure as members of the source selection organization, whether or not they are designated members of the SSAC or SSEB.

E. PROCEDURES

1. Organization

a. In the majority of competitive procurements, the contracting officer determines the successful offeror. In major defense system acquisitions, broader management participation in the source selection decision is essential.

b. The SSA function may be delegated by the DoD Component heads. The Component head normally will reserve the right to be briefed on the source selection results before announcement of the contract award.

c. The SSAC, when utilized, is a group of senior Government personnel with the requisite expertise to advise the SSA on an acquisition.

d. The SSEB is composed of personnel representing the various functional and technical disciplines relevant to the acquisition, to ensure a comprehensive evaluation of each offeror's proposal.

2. Release of Information. The effectiveness and integrity of the source selection process requires that all data and information received or developed during the source selection process be handled with the utmost discretion to avoid any compromise. Source selection data typically includes commercial and financial data received in confidence. Any public disclosure must be considered carefully in advance in accordance with DoD Directive 5400.7 (reference (j)) and DoD 5400.7-R (reference (k)).

3. Source Selection Plan and Solicitation

a. A source selection plan shall be prepared by the PM, reviewed by the PCO, and approved by the SSA before the issuance of the solicitation. Typically, a source selection plan consists of at least two parts. Part one describes the organization, membership, and responsibilities of the source selection team. While it is prudent not to disclose source selection team membership until after contract award, this part of the plan normally does not contain source selection sensitive information. The second part of the plan identifies evaluation criteria and detailed procedures for proposal evaluation. Source selection sensitive information in the plan must be protected from unauthorized disclosure to ensure the fairness and integrity of the source selection process.

GOVERNMENT PROTECTION OF CONTRACTOR PROPRIETARY DATA

Proprietary information, as defined in FAR 9.505-4(b), is information considered so valuable by its owners that it is held in secret by them and their licensees. The Government may receive such data in response to (1) informal Government requests for data; (2) as unsolicited proposals; or (3) in response to formal solicitations or requests for information. However received, the regulations are clear that contractor proprietary data must be protected from disclosure in order to ensure that confidential commercial and financial information will continue to be voluntarily submitted to the Government. In addition, this duty to protect contractor proprietary data exists regardless of whether the data is actually marked as being proprietary when submitted.

A. Data Received in Response to Informal Government Requests

When it is necessary to obtain information from potential contractors and others outside the Government for use in preparing Government estimates, FAR 5.401(a) mandates that FAR ensure that this information is not publicized or discussed with potential contractors. FAR 5.401(b)(2) also states that an exception to the general policy that a Contracting Officer must make available the maximum information to the public, is the

release of any information received in confidence from an offeror.

However, the FAR does not contain equally clear provisions setting forth the duty of Government personnel, other than the Contracting Officer, to protect contractor proprietary data received in response to informal requests for information by, for example, the program office. As will be discussed later in this paper, the only protection afforded this proprietary information would be that contained in the Freedom of Information Act and implementing regulations. However depending upon the circumstances, the Government personnel who released contractor proprietary data may have violated two Navy instructions. The first, SECNAVINST 4200.23A, 23 May 1972, Subj: Correspondence and Oral Communication with Contractors Concerning Department of the Navy Contractual Matters, prohibits oral discussions with commercial concerns that involve substantive matters in connection with pending or prospective procurement actions. The second, SECNAVINST 5370.2H, 24 October 1984, Subj: Standards of Conduct and Government Ethics, requires Naval personnel to avoid any action whether or not specifically prohibited that might result in or reasonably be expected to create the appearance of using public office for private gain or of giving preferential treatment to any person or entity and which prohibits personnel from using, directly or indirectly, inside information to further a private gain for themselves or

others if that information is not generally available to the public and was obtained by reason of their DOD positions.

B. Unsolicited Proposals

Some contractor data received prior to the issuance of a formal solicitation is more properly termed an unsolicited proposal, which is a written proposal that a contractor submits on its own initiative for the purpose of obtaining a contract but which is not in response to a formal or informal request by the Government, other than a publicized general statement of needs. Pursuant to FAR 15.508(a), Government personnel are precluded from using any data, concept, idea or other part of an unsolicited proposal whether or not bearing a restrictive legend, as the basis, or part of the basis, for a solicitation or in negotiations with any other firm, unless the offeror is notified of and agrees to the intended use. However, the regulations do permit the Government to use data, concepts, or ideas available from other sources without restriction.

If a contractor does not want his unsolicited proposal disclosed for any purpose other than for evaluation, FAR 15.509 instructs the contractor to place a legend entitled "Use and Disclosure of Data" on the cover page of its proposal and mark each restricted page with a statement subjecting it to the

restriction on the title page of the proposal. Once the unsolicited proposal is so restricted, the Government in turn is required to place a cover sheet on the unsolicted proposal that states that all Government personnel must exercise extreme care to ensure that the information in the proposal is not disclosed outside the Government and is not duplicated, used or disclosed in whole or in part for any purpose other than evaluation of the proposal. Any unsolicited proposal received with a legend different from that set forth at FAR 15.509 is required to be returned to the offeror with a letter stating that the proposal cannot be considered because it is impracticable for the Government to comply with the legend but that the agency will consider the proposal if it is resubmitted with the proper legend.

In addition, for that part of the unsolicited proposal that does bear a restrictive legend, FAR 15.508(b) warns that the disclosure by Government personnel of proposal information concerning trade secrets, processes, operations, style of work, apparatus and other matters, except as authorized by law, may result in criminal penalties under 18 U.S.C. § 1905. However, in the D.C. Circuit Court, as well as most of the other circuits, a violation of 18 U.S.C. §1905 would occur only if the contractor proprietary information was found to be exempt from mandatory disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. §552(b)(4). Dynalectron Corp., v. Department of the Air Force, No. 83-3399 (D.D.C. Oct. 30, 1984), Burnside-

Ott Aviation Training Center v. United States, 617 F.Supp 279 (S.D. Fla. 1985). FOIA exemption (b)(4) would apply to any proprietary information that is either a

> secret, commercially valuable plan, formula, process or device that is used for the making preparing, compounding or processing of trade commodities and that can be said to be the end or product of either innovation or substantial effort Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1288 (D.C. Cir 1983).

or commercial or financial information, that if disclosed, would either "impair the Government's ability to obtain necessary information in the future; or cause substantial harm to the competitive position of the person from whom it was obtained." Public Citizen Health Research Group v. FDA, 704 F.2d at 1290--1291 quoting National Parks and Conservation Assin v. Morton, 498 F.2d 765, 770 (D.C.Cir. 1974).

C. Data Received in Response to Formal Solicitations Requests For Information

Bids submitted in response to an Invitation for Bids would be treated as proprietary prior to the public bid opening. For all bids received before bid opening, FAR 14.401 requires that bids remain unopened in a locked bid box or safe, with all necessary precautions taken to ensure the security of the bid box or safe. In the event of bid cancellation, all bids are returned to the bidders.

For competitive negotiated procurements, FAR 15.413-2(a) states that proposals furnished to the Government are to be used for evaluation purposes only. While the regulations do not require that a proposal bear a restrictive notice in order to limit the Government's use of a contractor's proposal, FAR 15.413-2(b) encourages offerors to maximize the protection of their trade secrets or confidential or privileged commercial and financial information contained in them by applying the restrictive notice prescribed in FAR 52.215-12, Restriction of Disclosure and Use of Data to their proposals. Offerors are warned that while the Government will protect proposal information whether or not bearing a restrictive legend to the extent permitted by law, the Government would assume no liability for use or disclosure of data contained in a proposal that was not marked with a proper non-disclosure legend.

However, if offerors place restrictions on their proposals beyond those stated in the suggested legend, the Contracting Officer must ask the submitter if it is willing to accept the conditions of the provision of FAR 52.215-12, and if not, either to return the proposal or accept it as marked. FAR are instructed not to exclude an offeror from consideration merely because its proposal contains an authorized or agreed to notice.

The agency is further precluded under FAR 15.413-2(e) from releasing proposals outside the Government for evaluation without the approval of the agency head or designee, and only

after a written agreement is obtained from the evaluator that the data contained in the proposal will be used only for evaluation purposes and will not be further disclosed.

During discussions with offerors remaining in the competitive range, FAR 15.610 prohibits the release of information contained in one offeror's proposal to another offeror if it might cause technical transfusion or leveling among the offerors. FAR 15.610(d)(3)(iii) also forbids furnishing information about other offerors' prices.

When debriefing unsuccessful offerors, FAR 15.1003 states that the debriefing shall not reveal any information that is not releasable under FOIA, for example, trade secrets, privileged or confidential manufacturing processes and techniques, and commercial and financial information that is privileged or confidential, including cost break-downs, profit, indirect cost rates, and similar information.

Government personnel who release information contained in contractors' proposals to other contractors, or to unauthorized Government personnel would be violation of any non-disclosure statement signed prior to the start of the source selection, the SECNAV Instruction pertaining the the Standards of Conduct discussed earlier, and possibly DoD Directive 4105.62, September 9, 1985, Subj: Selection of Contractual Sources for Major Defense Systems. This directive requires persons participating

in certain source selection evaluation to avoid any discussions with offerors regarding proposal or any related matters once the source selection process begins.

D. Freedom of Information Act Protections

The Government is further constrained from disclosing contractor proprietary information under agency regulations implementing the Freedom of Information Act,("FOIA"), 5 U.S.C. §552 as amended. Exemption 4 of FOIA, 5 U.S.C. §552(b)(4), allows agencies to withhold "trade secrets and commercial or financial information obtained from a person and privileged or confidential." SECNAVINST 5720.42D, 4 December 1987, Subj: Department of Navy Freedom Of Information Program, applies this exemption to contractor records in the possession of the Government which contain trade secrets or commercial or financial records, "the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information, impair the Government's ability to obtain necessary information in the future or impair some other legitimate government interest." In accordance with Executive Order No. 12600, June 23, 1987, "Predisclosure Notification Procedures for Confidential Commercial Information, the Navy Instruction, Sec. 6e(6)(a) requires the Navy to notify submitters of confidential commercial information of the FOIA request and afford the submitter reasonable time to present any objections to the release. Once the deciding official determines

to withhold the information pursuant to FOIA exemption b(4). FAR 5.401(b)(3) prohibits its release.

A contractor dissatisfied with an agency decision to release information to a requestor would have no cause of action under FOIA or the Trade Secrets Act, 19 U.S.C. §1905, which is a criminal statute and provides for no private rights of action, but would seek judicial review of the disclosure decision under Section 10(e) of the Administrative Procedure Act, 5 U.S.C. §706(2(A) as being arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law. Chrysler Corp v. Brown, 441 U.S. 281, 317-18 (1979); Megapulse, Inc. v. Lewis, 672 F.2d 959 (D.C. Cir. 1982).

E. Other Regulations Protecting Contractor Proprietary Data

The FAR also recognizes that when a contractor requires or receives access to proprietary information from other contractors when performing advisory services to the Government, the contractor may gain an unfair competitive advantage unless restrictions are imposed. Therefore FAR 9.505-4 requires contractors with access to proprietary information of other companies to agree with the other companies to protect their information from unauthorized use or disclosure for as long as it remains proprietary, and refrain from using the information for any purpose other than that for which it was furnished. The

95-941 O - 89 - 12

Contracting Officer is required to obtain copies of these agreements and to ensure that they are properly executed.

F. Conclusion

Thus, as shown above, the regulations are quite specific when it comes to safeguarding contractor proprietary information, when received either prior to or after the issuance of a solicitation.

THE UNDER SECRETARY OF THE NAVY
WASHINGTON, D.C. 20350-1000

February 3, 1989

The Honorable Carl M. Levin
Chairman, Subcommittee on Oversight and
Government Management
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510-6260

Dear Mr. Chairman:

This supplements our letter of January 18, 1989 to your staff, and completes our response to your letter of December 16, 1988, requesting information on the issue of "inside information" and the appropriate scope of disclosure of procurement and planning information to private contractors.

In our preliminary response of January 18, we provided a list of the Navy's existing rules and regulations as you requested (Item A), discussed the adequacy of the guidance they provide in conjunction with the FAR and DoD policy (Item B), and described Navy actions to review document disclosure issues (Item C). Responses to your remaining queries (Items D through F) are set forth below.

> [D] Other than any action that may have been taken in response to the "Ill Wind" investigation has the Navy taken any disciplinary action against Navy officials in the last five years because of improper disclosure of procurement or planning information to a private contractor? If so, in how many cases has such action been taken?

We have identified disciplinary actions taken against six Navy employees for improper disclosure of planning or procurement information to private contractors during the last five years, other than those arising from the ongoing "Ill Wind" investigation.

You posed the following questions with respect to a list of types of documents:

> [E] Does the Navy have an official position as to whether this type of document should be disclosed to contractors? If so, what is the Navy's position?

> [F] Does the Navy have any applicable rules, regulations, instructions or other written guidance to its officials regarding the disclosure of this type of document? If so, please provide a copy.

[G] If disclosure is left to the discretion of individual officials within the Navy, which officials are responsible for this decision and what criteria guide their discretion?

Attachment A consolidates responses to each of these questions as they pertain to either a category of documents or specific documents within a category.

Attachment A limits its focus to regulations and instructions which most specifically govern the particular document or category of documents involved. Other Navy rules and regulations contained in the list provided on January 18, 1989 are not cited in all cases as they do not specifically govern only the document or category of documents under discussion. Further, those statutes and regulations governing all information will be among the criteria guiding the deciding official's discretion in every case, regardless of the type of document. These "umbrella" criteria include the laws, regulations and instructions pertaining to classified information, security, industrial security and the Freedom of Information Act. Copies of the referenced Navy instructions and regulations appear in the attachment.

In compiling our response to Items E through G, we became aware of several more instructions pertaining to Item A, i.e., rules and regulations concerning disclosure of procurement and planning information to private contractors. These additional instructions for the most part merely implement at the systems command level previously provided Secretary of the Navy instructions. To fully respond to your request we include them at Attachment B to supplement the list provided with our preliminary response of January 18, 1989.

I hope that the information provided is helpful.

Sincerely,

H. Lawrence Garrett, III

Attachments

PLANNING AND BUDGETARY INFORMATION

1. Program Objective Memoranda (POMs).

POMs are prepared and submitted to OSD by Military Departments every other year (normally April of the first year of the biennial cycle). Documents outline, in 9 volumes, resource allocation decisions made by the Military Department pursuant to Defense Guidance. Distribution is made by DONPIC to OSD, JCS, and Defense agencies as directed by OSD and internally to offices involved in programming process. Classification is SECRET.

2. Five Year Defense Plans (FYDPs).

The FYDP is an internal management plan, and, with respect to the outyears, a tentative plan, representing goals and objectives within an approved resource level. FYDP documents are prepared at periodic times to summarize, by program element, the resources and forces planned by a Military Department. The FYDP is typically updated by the Military Departments at the direction of OSD concurrent with the POM submission, the Budget Estimates Submission to OSD, and the President's Budget. OSD controls the actual database and prints documents. OSD distributes within OSD and to Military Departments; NAVCOMPT coordinates internal DON distribution. There is now also a requirement for submission of FYDP to Congress, also a responsibility of OSD. Copies are classified SECRET and numerically controlled.

3. Program Element Descriptive Summaries (PEDS).

PEDS is a generic term which applies to the primary budget justification exhibit for Research. PEDS are updated at each stage of budget process, culminating in submission to Congress with the President's Budget. A separate descriptive summary is prepared for each program element, and these are assembled into three volumes for printing. Classification varies by program element, including UNCLASSIFIED, CONFIDENTIAL, and SECRET. Distribution is made by NAVCOMPT in accordance with DoD and DON Budget Guidance Manual guidance.

4. Budget Estimate Submissions (BESs).

BES is a generic term which applies to all budget material submitted for review by OSD. BESs represent Military Department proposed budget and justification material, based on SECDEF Program Decision Memorandum (PDM). Requirements and OSD distribution are set forth in DoD Budget Guidance Manual. Classification varies, but normally includes up to SECRET level.

5. Program Decision Memoranda (PDMs).

PDMs are SECDEF/DEPSECDEF decision document which approve or modify Military Department program proposals contained in POMs. OSD distributes them within OSD and to Military Departments. DONPIC coordinates internal DON distribution. Copies are normally classified SECRET and numerically controlled.

6. Program Budget Decisions (PBDs).

PBDs are OSD decision documents, normally signed by DEPSECDEF or the Comptroller, which approve or modify Military Department budget proposals contained in Budget Estimates Submissions. OSD Comptroller distributes PBDs within OSD and to the Military Departments. NAVCOMPT coordinates internal DON distribution. Classification varies, but normally includes up to SECRET level.

7. Program Decision Packages (PDPs).

Term not recognized.

8. Drafts of Above Documents.

Drafts are distributed on an exception basis to internal DoD parties which must review prior to release or final approval.

GENERAL POLICIES GOVERNING PUBLIC DISCLOSURE OF BUDGET AND RELATED MATERIALS.

OMB Circular A-11 states the general prohibition concerning public disclosure of budget materials prior to the transmission of the President's budget to Congress. This policy is promulgated throughout DON by the NAVCOMPT Manual, Vol. 7, paragraph 072121. Information generated during the PPBS cycle, including program and budget proposals of the Military Departments, and decision documents on those proposals, are therefore not normally made available outside of the official use requirements of participants in the process. The DoD Budget Guidance Manual (DoD 7110.1M) and the DON Budget Guidance Manual (NAVCOMPTINST 7102.2A) set forth actual distribution and dissemination lists of budget justification materials, including those for distribution of budget material associated with the President's budget, but do not address release to the public. Standing DoD policy with regard to public availability of official President's budget justification documents of the Department calls for copies of all unclassified documents, and sanitized copies of classified documents, to be provided for public and media use to the Defense Technical Information Center, the National Technical Information Service, and the Assistant Secretary of Defense (Public Affairs). With respect to FYDP data, however, DoD prohibits, unless expressly authorized by DoD, the release of all information from published

FYDP documents, the FYDP data base, and all equivalent documents and data produced and maintained by the Components.

While the above outlines general distribution and disclosure considerations, individual release cases are governed by applicable information disclosure policies, including DoD and DON information security instructions, industrial security policy, and FOIA considerations.

NEEDS/REQUIREMENTS INFORMATION

1. STATEMENTS OF NEED

a. Description. The Navy does not generate a document entitled "Statement of Need." The Navy equivalent of this document is the Operational Requirement, addressed below.

b. Regulations Governing Public Release.

Nonapplicable.

c. Decision Maker on Public Release.

Nonapplicable.

d. Factors Influencing Decision to Release/Not Release.

Nonapplicable.

2. JUSTIFICATION FOR MAJOR SYSTEM NEW STARTS (JMNS)

a. Description. This document has been renamed. It is now called Mission Needs Statement (MNS). A MNS is required when a new major defense acquisition program is expected to meet the dollar threshold criteria in DODDIR 5000.1. It is submitted by the requesting service to the DAB with or before POM submission. It normally requires DAB approval before funds are committed to the POM. It serves as the program baseline at Milestone 0.

b. Regulations Governing Public Release.

A MNS may be released to contractors in accordance with OPNAVINST 3910.19B.

c. Decision Maker on Public Release.

Navy Acquisition, Research and Development Information Center (NARDIC), with the concurrence of the cognizant program manager.

d. Factors Influencing Decision to Release/Not Release.

When issued to a contractor, all dollar figures are expunged. In accordance with OPNAVINST 3910.19B, MNS are dissiminated to industrial organizations having the proper security clearance and a need to know. The cognizant program manager exercises discretion in specifying, on a case-by-case basis, what information exceeds an individual contractor's need to know. This is used by NARDIC in determining releasibility.

3. OPERATIONAL REQUIREMENTS

a. Description. An OR is a statement of operational need by an OPNAV sponsor. It identifies the desired capabilities of the system, the threat to be countered, anticipated platforms to employ the system, cost estimates, and a general acquisition strategy. Issuance of an OR by a sponsor constitutes an obligation to fund it during the POM. The OR serves as program definition for new starts which are not major defense acquisition programs. OPNAVINST 5000.42C applies.

b. Regulations Governing Public Release.

An OR may be released to contractors in accordance with OPNAVINST 3910.19B.

c. Decision Maker on Public Release.

Navy Acquisition, Research and Development Information Center (NARDIC), with the concurrence of the cognizant program manager.

d. Factors Influencing Decision to Release/Not Release.

When issued to a contractor, all dollar figures are expunged. In accordance with OPNAVINST 3910.19B, ORs may be released to specified contractors who have security clearances and a need to know, and who are qualified DoD contractors, or potential contractors (i.e., participants in the Navy/Industry Cooperative Research and Development Program (NICRAD)). The cognizant program manager specifies, on a case-by-case basis, the extent to which information in the OR exceeds the contractor's need to know. NARDIC uses the program manager's determination in determining releasability.

4. ISSUE PAPERS AND RESPONSES

a. **Description.** This appears to encompass internal point papers, planning memoranda, and other predecisional planning tools.

b. **Regulations Governing Public Release.**

The Freedom of Information Act. 5 U.S.C. 442. and the implementing DoD and DoN instructions govern releasability.

c. **Decision Maker on Public Release.**

The custodian of the document.

d. **Factors Influencing Decision to Release/Not Release.**

Such documents represent internal. predecisional discussions and deliberations and generally are considered nonreleasable.

5. R & D MASTER PLANS

a. Description. No such formal document exists in Navy acquisition, but see "Service Master Plans," below. To determine whether this type of data appears in a document under a different title more information is necessary.

b. Regulations Governing Public Release.

Nonapplicable.

c. Decision Maker on Public Release.

Nonapplicable.

d. Factors Influencing Decision to Release/Not Release.

Nonapplicable.

6. SERVICE MASTER PLANS

a. Description. The Navy does not generate a document entitled "Service Master Plans." However, the Navy uses warfare master plans which serve as long-range planning tools for warfare specific areas. Current examples in the Navy include: ASW, Amphibious/Strike Warfare, Mine Warfare, and AAW. The document includes projected force levels, planned improvements, expected employment, funding, and shortfalls. The master plan is basically a long-range view of a specific warfare area beyond ten years, and a plan to achieve the goal.

b. Regulations Governing Public Release. Master plans are not releasable to contractors without permission of OP-07, Director of Naval Warfare in accordance with OPNAVINST 3910.19B.

c. Decision Maker on Public Release.

Director of Naval Warfare.

d. Factors Influencing Decision to Release/Not Release.

FOIA and security considerations are factors in deciding whether to release.

7. MISSION AREA PLANS

a. Description. The Navy does not generate a document entitled "Mission Area Plan." To the extent that a document within the purview of the Navy's warfare master plans is contemplated, refer to "Service Master Plans." above. Otherwise, more information is necessary to determine whether this type of data appears in a document under a different title.

b. Regulations Governing Public Release.

Nonapplicable.

c. Decision Maker on Public Release.

Nonapplicable.

d. Factors Influencing Decision to Release/Not Release.

Nonapplicable.

8. INTEGRATED PRIORITY LISTS

a. Description. The Navy does not generate a document entitled "Integrated Priority List."

b. Regulations Governing Public Release.

Nonapplicable.

c. Decision Maker on Public Release.

Nonapplicable.

d. Factors Influencing Decision to Release/Not Release.

Nonapplicable.

9. FEASIBILITY STUDIES

a. Description. No formal document of this title exists in the Navy. Such studies are made, however, to assess the feasibility of the program, approach, or other topic under discussion.

b. Regulations Governing Public Release.

The Freedom of Information Act, 5 U.S.C. 552, and the DOD and Navy implementing instructions, as well as applicable security instructions, govern release of feasibility studies.

c. Decision Maker on Public Release.

The custodian of the document.

d. Factors Influencing Decision to Release/Not Release.

FOIA and security considerations are factors governing the decision to release.

10. THREAT ANALYSES

a. Description. This document is a system threat assessment report (STAR), which is the authoritative document containing threat information relating to a program.

b. Regulations Governing Public Release.

These documents are classified and therefore subject to handling in accordance with Navy instructions governing classified information. Further, contractors may not receive intelligence information unless it is required by contract.

c. Decision Maker on Public Release.

Naval Technical Intelligence Center (NTIC).

d. Factors Influencing Decision to Release/Not Release.

FOIA and security considerations are factors influencing a decision to release; however, release is prohibited to all except to contractors who, by the terms of a contract, must gain access to the STAR.

11. Drafts of Needs/Requirements Information

a. Description. Drafts are preliminary versions of final documents as discussed in the needs/requirements information category.

b. Regulations Governing Public Release.

The regulations cited as applicable to the final document are likewise applicable to the draft document.

c. Decision Maker on Public Release.

The same official responsible for deciding on the final document.

d. Factors Influencing Decision to Release/Not Release.

The same considerations which apply to the final document apply also to the draft document.

TECHNICAL DATA ON SPECIFIC PROCUREMENTS

1. TECHNICAL STUDIES AND REPORTS

a. **Description.** Technical (including scientific) studies and reports are documents written for the permanent record to document results of RDT&E efforts. The report data bases are maintained at the Defense Technical Information Center (DTIC). The purposes of this program are to ensure that scientific and technical information (STI) provides maximum contribution to the advancement of science and technology; permit timely, effective and efficient conduct and management of DOD research, engineering, and studies programs; eliminate unnecessary duplication of effort and resources; and encourage and expedite the interchange and use of STI. The program provides for interchange of STI within and among DOD components and their contractors, federal agencies and their contractors, and the national and international scientific and technical communities. SECNAVINST 3900.43 applies.

b. **Regulations Governing Public Release.**

DODREG 3200.12-R-3, Dissemination of DOD Technical Information.

DLAM 4185.16, Certification and Registration for Access to DOD Scientific and Technical Information, March 1988.

c. **Decision Maker on Public Release.**

The program manager for the program that generated the report.

d. **Factors Influencing Decision to Release/Not Release.**

The nature of the information in the report determines releasability. Information of a classified or proprietary nature is governed by security and FOIA considerations. Many reports containing proprietary information are generated for use in management decisions and are available to Defense Components only. Other reports are available to all organizations registered for access with DTIC.

2. TEST PLANS

a. Description. Test and evaluation master plans (TEMPs) are internal Navy documents which define and integrate test objectives, critical issues, systems characteristics, responsibilities, resources and schedules. Most are classified. OPNAV must approve release to other than Navy activities.

b. Regulations Governing Public Release.

OPNAVINST 3960.10C, Test and Evaluation, 14 Sep 87.
OPNAVINST 5510.1H, Security Manual.
OPNAVINST 3070.1A, Operations Security, 24 Jun 85.
SECNAVINST 5720.44A, Public Affairs Manual, 3 Jun 87.
SECNAVNOTICE 3960, Policy for Public Release of Test and Evaluation Data, 3 Jul 86.

c. Decision Maker on Public Release.

OP-098. Certain categories of information defined in SECNAVINST 5720.44A and referred to as "Exhibit 12A" information must be approved by ASD(PA).

d. Factors Influencing Decision to Release/Not Release.

Applicable factors include the security classification and technical sensitivity of the information (e.g., whether the technology involved is on the Militarily Critical Technologies List (MCTL)).

3. FAILURE ANALYSES

a. Description. Failure analysis is the analysis of, and the identification of means to eliminate, the causes of a failure in a system or subsystem. Policies and procedures for public release of Failure Analysis data are specified by SECNAV and implemented by OPNAV.

b. Regulations Governing Public Release.

SECNAV NOTICE 3960 of 3 Jul 86, Policy for Public Release of T&E Data.
SECNAVINST 5720.44A, Public Affairs Manual.

c. Decision Maker on Public Release.

CNO (OP-098) is the final releasing authority on failure analysis data including material prepared by contractors for their own use. Certain categories of information specified in SECNAVINST 5720.44A require release approval by ASD(PA).

d. Factors Influencing Decision to Release/Not Release.

Applicable factors include the security classification and technical sensitivity of the information (e.g., whether the technology involved is on the Militarily Critical Technologies List (MCTL)).

4. DRAFT SPECIFICATIONS

a. **Description.** Specifications are descriptions of the technical and other requirements established for weapon systems, components of weapon systems, stand alone equipment, facilities, supplies or services being procured. They may be written either by the government or a contractor, depending on the specific program.

The two basic types of specifications are functional (performance) specifications which define the performance required rather than "how to" achieve it, and design specifications, which tell how the results are to be achieved.

Specifications where there are repetitive demands are listed in the Department of Defense Index of Specifications and Standards (DODISS) or the Index of Federal Specifications, Standards, and Handbooks.

These documents are called draft specifications during their development.

b. **Regulations Governing Public Release.**

FAR Parts 7 & 10 (FAC 84-39 dated 2 Sep 88).
DFARS Parts 207 & 210 (DAC 88-1 dated 1 Nov 88).
DODD 5000.43, Acquisition Streamlining of 15 Jan 86.
DOD 4120.3M, Defense Standardization and Specification Program Policies, Procedures and Instructions of Aug 78.

c. **Decision Maker on Public Release.**

The program manager. However, for specifications included in the DODISS, DOD 4120.3M requires that the draft specifications be coordinated with representative segments of the industry concerned.

For all DOD system acquisition programs the FAR and DODD 5000.43 encourage that draft solicitations be circulated to industry for review and comment before formal issuance. The draft specification is part of the draft solicitation.

d. **Factors Influencing Decision to Release/Not Release.**

The basic philosophy is that early industry involvement results in a more realistic, producible, and affordable end item. Early circulation of draft specifications allows industry to get a better understanding of what we want, permits resolution of areas of confusion, and encourages competition.

The dollar value of a program, complexity of equipment, classification of the program, etc. are among other considerations in determining whether to circulate the draft specification. Moreover, in the case of competitive

acquisitions, draft specifications should be released, at an appropriate time, to all potential competitors to ensure equality of treatment. Individual requests for release of draft specifications are considered in light of the regulations governing release, as well as security and FOIA factors.

5. STATEMENTS OF WORK

a. **Description.** The Statement of Work is that portion of a contract which describes the actual work to be done, by means of specifications or other minimum requirements, quantities, performance dates, and a statement of the requisite quality.

b. **Regulations Governing Public Release.**

FAR parts 7 & 10 (FAC 84-39 dated 2 Sep 88).
DFARS parts 207 & 210 (DAC 88-1 dated 1 Nov 88).
DODD 5000.43, Acquisition Streamlining of 15 Jan 86.

c. **Decision Maker on Public Release.**

The program manager via the contracting officer releases this information to the public. Statements of Work are used in conjunction with other information, such as draft specifications and item descriptions, as the basis for preparation of draft solicitations, procurement requests, and requests for proposal. As such, Statements of Work are treated similar to draft specifications and are governed by the same regulations in terms of public release.

d. **Factors Influencing Decision to Release/Not Release.**

The basic philosophy is that early industry involvement results in a more realistic, producible, and affordable end item. Early circulation of statements of work allows industry to get a better understanding of what we want, permits resolution of areas of confusion, and encourages competition.

The dollar value of a program, complexity of equipment, classification of the program, etc. are among the considerations in determining whether to circulate the Statement of Work. Requests for release are subject to security and FOIA considerations.

6. PROCUREMENT REQUESTS

a. Description. A Procurement Request is a document which describes the required supplies or services so that a procurement can be initiated. Typically, a procurement request includes desired quantities, a statement of work, delivery schedule, and inspection and receipt of information and may also include proposed terms and conditions. PRs are sent from a requiring office, e.g., a program office, to a contracting office for action.

b. Regulations Governing Public Release.

While there are no formal regulations specifically governing public release of Procurement Requests, these are by nature documents of a decision-making or managerial nature that are the responsibility of the Government. They may contain classified, proprietary or business sensitive information that, by their very nature, are not suited for public release.

c. Decision Maker on Public Release.

The contracting office has the ability to release this information to the public.

d. Factors Influencing Decision to Release/Not Release.

Portions of the information in the Procurement Request, such as description, quantity, statement of work and the like, appear in other documents (e.g., draft solicitations) which may be releasable, depending upon the stage of acquisition. In the case of competitive acquisition, however, the Navy must guard against giving a competitive advantage to any contractor. Such an advantage could arise by release of the Procurement Request, which is an internal Navy working document. Thus, while early release of draft solicitations to industry is encouraged, release of the Procurement Request is widely acknowledged as being prohibited.

7. DRAFT RFPs (INCLUDING EARLY DRAFTS NOT FORMALLY CIRCULATED PURSUANT TO THE FAR)

a. **Description.** Draft RFPs are draft solicitations (Requests for Proposals) released for the purpose of obtaining meaningful feedback on proposed acquisitions. Draft RFPs are generally complete solicitation documents which include the Statement of Work (SOW), specifications, data requirements, and provisions and clauses.

b. **Regulations Governing Public Release.**

SECNAVINST 4200.33, 14 Jul 86 and DOD Directive 4105.62, 9 Sep 85, Selection of Contractual Sources for Major Defense Systems (paragraph E.3.h.) encourages the use of complete, draft RFPs to enhance the acquisition program by obtaining meaningful feedback on changes which would improve system performance or reduce life cycle costs. Early draft RFPs are not specifically covered by instructions but as an internal working document would normally not be released.

c. **Decision Maker on Public Release.**

Contracting Officer.

d. **Factors Influencing Decision to Release/Not Release.**

Applicable factors would include the complexity of the program and contract requirements and the potential for cost reduction and program enhancement.

PROCUREMENT PLANNING INFORMATION

1. ACQUISITION PLANS

a. **Description.** Written Acquisition Plans, as detailed in the Navy Acquisition Handbook (1 Nov 88), are to integrate the efforts of all personnel responsible for significant aspects of an acquisition to ensure that the Government meets its needs in the most effective, economical and timely manner. APs are the principal document for detailed program review and oversight by ASN(FM)/ASN(RE&S)/ASN(S&L).

b. **Regulations Governing Public Release.**

While there are no formal regulations specifically governing public release of Acquisition Plans, these are by nature documents of a policy-making, decision-making or managerial nature that are the responsibility of the Government. These often contain classified, proprietary or business sensitive information that, by their very nature, are not suited for public release. DOD Directive 4105.62 of 9 Sep 85 states "The effectiveness and integrity of the source selection process requires that all data and information received or developed during the source selection process be handled with the utmost discretion to avoid any compromise."

c. **Decision Maker on Public Release.**

Acquisition Plans, in whole or in part, may be released under the provisions of the Freedom of Information Act. DFARS appendix L establishes procedures for release of information under FOIA.

d. **Factors Influencing Decision to Release/Not Release.**

Standards of Conduct, FOIA, and common sense are the biggest factors influencing release of Acquisition Plans. These documents contain significant amounts of information internal to the Government which generally should not be released. Funding for particular acquisition is an example. Release of the funding available for a particular acquisition may tend to permit inflated pricing.

2. SOURCE SELECTION PLANS

a. Description. The Source Selection Plan is a detailed document which identifies the organization, membership, and responsibilities of the source selection evaluation team and identifies the evaluation criteria and detailed procedures for proposal evaluation.

b. Regulations Governing Public Release.

DOD Directive 4105.62 of 9 Sep 85, as implemented by SECNAVINST 4200.33, states "The effectiveness and integrity of the source selection process requires that all data and information received or developed during the source selection process be handled with the utmost discretion to avoid any compromise." FOIA considerations also govern disclosure.

c. Decision Maker on public Release.

This information, in whole or in part, may be released under the provisions of FOIA. DFARS appendix L establishes procedures for release of information under FOIA. SECNAVINST 4200.33 designates the SSA as the authority to authorize release of source selection data and information.

d. Factors Influencing Decision to Release/Not Release.

Good business sense and the stage of the acquisition cycle are two of the biggest factors influencing release of Source Selection Plans. The Source Selection Plan is established to ensure that the Source Selection Authority acquires adequate information to make an informed, reasonable decision based on costs and other factors. While the evaluation criteria in Section M reflect those in the Source Selection Plan, the latter provides, in many cases, a far more detailed description of how offerors will be evaluated, and by whom. Release of such information prior to award could not only give a competitive advantage to one or more competitors, but could also interfere with the Government's ability to obtain from contractors proposals accurately portraying the contractors' intent and abilities to meet the Government's needs. Therefore, release before award is generally improper, even under the FOIA considerations. To the extent that release could cause harm to future procurements, the Source Selection Plan is considered nonreleasable even after award.

3. CURRENT FUNDING PROFILES

a. **Description.** A current funding profile is an annex to the Decision Coordinating Paper (DCP) which identifies program resource dollars associated with development and production quantities on a current and projected fiscal year basis.

b. **Regulations Governing Public Release.**

While no regulations specifically address this document, it is generally covered within the prohibitions of FAR 5.401(b), particularly with regard to release of plans which would provide an undue or discriminatory advantage to private or personal interests.

c. **Decision Maker on Public Release.**

The custodian of the document.

d. **Factors Influencing Decision to Release/Not Release.**

These profiles comprise data which relate to FYDPs and are therefore subject to the restrictions on release of FYDP data imposed by DOD. An additional factor is the status of the program.

4. COST MODELS

a. Description. Cost models are an estimating tool consisting of one or more cost estimating relationships, estimating methodologies, or estimating techniques used to predict the cost of a system or one of its lower level elements.

b. Regulations Governing Public Release.

While no regulations statutes or Navy regulations specifically address or prohibit the release of a cost model to the public. However, the underlying data may be proprietary, business sensitive or classified, in which case the prohibitions listed at FAR 5.401(b) may apply.

c. Decision Maker on Public Release.

Individual analyst unless special considerations apply.

d. Factors Influencing Decision to Release/Not Release.

Factors include the maturity of model and the sensitivity of associated data, particularly with respect to avoid giving a private contractor a competitive advantage in a competition to which the cost model pertains.

5. SHOULD COST STUDIES

a. Description. Should cost studies are specialized Government cost analyses which aim to identify uneconomical or inefficient practices in a contractor's management and operating systems for the purpose of evaluating the cost of production programs and promoting both long- and short-term improvements in contractor operations.

b. Regulations Governing Public Release.

Should cost studies are governed by NAVMATINST 4330.37 (25 Mar 74) which does not address public release of such studies. However, should cost data is considered business sensitive and therefore may fall within the prohibitions against public release of information listed at FAR 5.401(b).

c. Decision Maker on Public Release.

SYSCOM or other activity conducting the analysis.

d. Factors Influencing Decision to Release/Not Release.

Among the factors to consider are the data to be purged from the document and the consent of the corporation. Because should cost studies necessarily involve an in-depth analysis of contractors' production facilities and management structure, the should cost report will inevitably contain substantial amounts of proprietary information which is properly protectable under exemption 4 of the FOIA.

6. LIFE CYCLE COST STUDIES

a. **Description.** Life cycle cost studies are an approach to costing that considers all costs (Government and contractors) incurred during the life of the system, subsystem or component. It includes the total cost of system ownership over the system's life cycle including costs to develop, produce, operate, support, and dispose of a system, subsystem or component. A life cycle cost is the sum of the costs of the component elements in the life cycle. There is, then, no difference between the response on this item and the response on the item entitled "Internal Government Cost Estimates," below.

b. **Regulations Governing Public Release.**

No statutes or Navy regulations specifically address or prohibit the release of a life cycle cost studies to the public. However, the underlying data may be proprietary, business sensitive or classified, in which case the prohibition listed at FAR 5.401(b) may apply. FOIA considerations particularly exemptions 4 and 5, would also come into play.

c. **Decision Maker on Public Release.**

Commander or Director of estimating activity.

d. **Factors Influencing Decision to Release/Not Release.**

Applicable factors include the sensitivity of the data (e.g., business sensitive, proprietary, etc.), the status of a source selection, and whether release would provide a competitive advantage to a contractor.

7. INTERNAL GOVERNMENT COST ESTIMATES

a. **Description.** A cost estimate is the result or product of cost analysis which specifies the expected dollar cost (a single value or range of values) of acquiring an item or accomplishing a specific task. Cost estimates are prepared using factors, estimating relationships, analogies, and automated cost models (SECNAVINST 7000.19B, 12 Mar 75). In addition, for all major weapons programs, an Independent Cost Estimate (ICE) or analysis of program costs is accomplished at Milestones I, II, and III. The ICE serves as a check against the program office estimate and includes an assessment of program ground rules and assumptions, estimating methodology, data sources, and summary level estimates and conclusions SECNAVINST 5000.2, 1 Nov 88 applies.

b. **Regulations Governing Public Release.**

Data supporting cost estimates may be business sensitive, proprietary, or classified. Cost estimates, if released, may also provide an unfair competitive advantage to a contractor. As such, cost estimates may be governed by the prohibition listed at FAR 5.401(b).

c. **Decision Maker on Public Release.**

Commander or Director of estimating activity.

d. **Factors Influencing Decision to Release/Not Release.**

Applicable factors include the sensitivity of the data (e.g., business sensitive, proprietary, etc.), the status of a source selection, and whether release would provide a competitive advantage to a contractor.

3. DRAFTS OF PROCUREMENT PLANNING INFORMATION DOCUMENTS

a. **Description.** Drafts of final official procurement planning documents are preliminary versions of the final official documents.

b. **Regulations Governing Public Release.**

No statutes or Navy regulations specifically address or prohibit the release of such draft documents to the public. Generally, FOIA and other considerations applicable to the final document apply.

c. **Decision Maker on Public Release.**

Same official having release authority on the final document.

d. **Factors Influencing Decision to Release/Not Release.**

Same as those for the final version of the document, with the overriding consideration being that drafts, as internal and preliminary documents, are generally not publicly released.

SOURCE SELECTION INFORMATION

1. BIDDERS/OFFERORS LISTS

a. Description. Lists are of two types.

(1) The first is a required record of offerors solicited and offerors responding to each individual procurement. This list contains each offeror's name, address, when solicited and response.

(2) The second is a consolidated "Mailing List" of potential source categorized by type of commodity/service for future reference and solicitation. Information (name, address, supply/service areas of interest, size status) is generated from the SF (Standard Form) 129.

b. Regulations Governing Public Release.

Aside from generic guidance on release of information to the public contained in 5 U.S.C. 552 (Freedom of Information Act), and the implementing DOD and Navy instructions, specific guidance is contained in FAR Parts 14, (14.204, 14.205).

c. Decision Maker on Public Release.

The Contracting Officer is the point of contact for public request. FAR 14.205-5 states that activities shall make such lists available to the public, in response to written requests in accordance with the agency's regulations implementing FOIA.

d. Factors Influencing Decision to Release/Not Release.

In addition to compliance with FAR 14.205-5, Contracting Officers will pro-actively publish lists of prospective offerors in the CBD in accordance with FAR 5.206 whenever there are significant subcontracting opportunities.

2. PAST SUPPLIERS LIST

a. **Description.** There is no requirement for such list, per se, but past suppliers should be included in both the bidders mailing list and record of solicitations/response to individual procurements.

b. **Regulations Governing Public Release.**

Aside from generic guidance on release of information to the public contained in 5 U.S.C. 552 (Freedom of Information Act), and the implementing DOD and Navy instructions, specific guidance is contained in FAR Parts 14 (14.204, 14.205).

c. **Decision Maker on Public Release.**

Contracting Officer.

d. **Factors Influencing Decision to Release/Not Release.**

In addition to compliance with FAR 14.205-5, Contracting Officers will pro-actively publish in the CBD, in accordance with FAR 5.206, lists of prospective offerors, which can include past suppliers, in the CBD whenever there are significant subcontracting opportunities.

J. BID INTENT LIST

a. **Description.** This terminology does not appear in procurement regulations. It appears to refer to the Bidders/Offerors list at a specific point in time, i.e., prior to the due date for offers.

b. **Regulations Governing Public Release.**

Aside from generic guidance on release of information to the public contained in 5 U.S.C. 552, Freedom of Information Act, and the DOD and Navy implementing instructions, specific guidance is contained in FAR Parts 14 (14.204, 14.205).

c. **Decision Maker on Public Release.**

Contracting Officer.

d. **Factors Influencing Decision to Release/Not Release.**

While there are many types of information which the Navy would not choose to disclose until after award, this is not one necessarily requiring such control. Additionally, prospective offerors may be identified in advance in the CBD if the Contracting Officer feels there is significant opportunity for subcontracting.

4. IDENTITIES OF ACTUAL BIDDERS/OFFERORS: IDENTITIES OF BIDDERS/OFFERORS IN THE COMPETITIVE RANGE

a. Description. There are two major methods of contract award. Sealed Bidding and Negotiation.

For Sealed Bidding, FAR 14.4 establishes a requirement of a formal Bid opening where the names and prices of the bidders are publicly released. (A bid deemed timely, notwithstanding receipt subsequent to the formal bid opening, is also considered to be open to the public.) There is no "competitive range" under sealed bid procedures.

Under negotiated procurements, the actual number of offerors and their identities are considered to be source selection sensitive and not released to the public. FAR 15.413-1(a) states that before award and "[a]fter receipt of proposals, none of the information or identity of offerors shall be made available to the public or to anyone in the Government not having a legitimate interest."

b. Regulations Regarding Public Release.

FAR 14.4 establishes the requirements for a formal bid opening under Sealed Bid procedures.

Under negotiated procurements, DOD Directive 4105.62 of 9 Sep 85, as implemented by SECNAVINST 4200.33, states "The effectiveness and integrity of the source selection process requires that all data and information received or developed during the source selection process be handled with the utmost discretion to avoid any compromise." See also FAR 15.413-1(a), noted above.

c. Decision Maker on Public Release.

Under negotiated procurements, this information, in whole or in part, may be released if required under the provisions of FOIA. DFARS Appendix L establishes procedures for release of information under FOIA. SECNAVINST 4200.33 designates the SSA as the authority to authorize release of source selection data and information.

d. Factors Influencing Decision to Release/Not Release.

Good business sense and the stage of the acquisition cycle are considerations in determining whether to release. While identities and numbers of competitors are considered source selection sensitive prior to award, such information may be subject to release subsequent to award.

5. SOURCE SELECTION ADVISORY COUNCIL MEMBERS; SOURCE SELECTION EVALUATION BOARD MEMBERS; SOURCE SELECTION AUTHORITY

a. Description.

(1) Source Selection Advisory Council: Consisting of a Chairman and other senior military and civilian personnel, the SSAC acts as staff and advisor to the SSA throughout the Source Selection process and may, if requested, prepare a comparative analysis of the evaluation results. Normally, representatives from the various functional areas involved in the acquisition shall be included on the SSAC. SECNAVINST 4200.33 dated 14 Jul 86 applies.

(2) Source Selection Evaluation Board (SSEB): Consisting of a Chairman and other qualified Government contracting, technical, and administrative/management personnel, the SSEB directs, controls and performs the evaluation of proposals and prepares a source selection evaluation report which clearly and concisely describes the results of the proposal evaluation including strengths, weaknesses and risks associated with each offeror's proposal (SECNAVINST 4200.33 dated 14 Jul 86.)

(3) Source Selection Authority (SSA). The SSA is the Government official in charge of selecting the source. This title is most often used when formal source selection procedures are used and the SSA is other than the Contracting Officer (FAR 15.601). The SSA makes the final source selection decision based upon the supporting rationale.

b. Regulations Governing Public Release.

DOD Directive 4105.62 dated 9 Sep 85, as implemented by SECNAVINST 4200.33, states "The effectiveness and integrity of the source selection process requires that all data and information received or developed during the source selection process be handled with the utmost discretion to avoid any compromise." Public disclosure must be considered in accordance with FOIA.

c. Decision Maker on Public Release.

This information, in whole or in part, may be released under the provisions of the FOIA. DFARS Appendix L establishes procedures for release of information under FOIA. SECNAVINST 4200.33 designates the SSA the authority to authorize release of source selection data and information.

d. Factors Influencing Decision to Release/Not Release.

Good business sense and the stage of the acquisition cycle are among the factors to be considered in determining releasability. While identities and numbers of evaluators are considered "Source Selection Sensitive" prior to award, such information may be subject to release subsequent to award.

o. EVALUATION CRITERIA (INCLUDING NUMERICAL WEIGHTINGS, ASSESSMENT CRITERIA, KNOWN DISCRIMINATORS, AND OBJECTIVE STANDARDS)

a. **Description.** Evaluation criteria are a significant portion of the Source Selection Plan. The purpose of the evaluation criteria is to inform offerors of the importance the Government attaches to various aspects of a proposal. Evaluation criteria and their relative importance must flow from the statement of work.

Offerors are advised in Section M of the solicitation of the basis for award, i.e., factors and subfactors that will be evaluated for award of the contract and the relative importance that the Government places on these factors and subfactors. The Section M information is not as detailed as the Evaluation Criteria of the Source Selection Plan "to preclude intentional or unintentional bias in proposals or evaluations." (DOD Directive 5104.62).

b. **Regulations Governing Public Release.**

DOD Directive 4105.62 of 9 Sep 85, as implemented by SECNAVINST 4200.33, states that "The effectiveness and integrity of the source selection process requires that all data and information received or developed during the source selection process be handled with the utmost discretion to avoid any compromise." Public disclosure must be considered in accordance with FOIA.

c. **Decision Maker on Public Release.**

This information, in whole or in part, may be released if required under the provisions of FOIA. DFARS Appendix L establishes procedures for release of information under FOIA. SECNAVINST 4200.33 designates the SSA as the authority to authorize release of source selection data and information.

d. **Factors Influencing Decision to Release/Not Release.**

Good business sense and the stage of the acquisition cycle are two of the biggest factors influencing release of Source Selection Plans. As part of the source selection plan, the detailed evaluation criteria (as opposed to those which appear in Section M of a solicitation) come within the ambit of being "procurement sensitive." This information is considered nonreleasable prior to contract award because of potential irreparable harm to the integrity of the procurement process. Moreover, detailed evaluation criteria which may be used in future procurements is considered nonreleasable even after award.

7. ACTUAL EVALUATION MATERIALS (AFTER AWARD)

a. Description. Evaluation materials include the Source Selection Plan, evaluation criteria, evaluation narratives, evaluation ratings, and summaries and reports used in the source selection decision.

b. Regulations Governing Public Release.

SECNAVINST 4200.33, Selection of Contractual Sources for Department of the Navy Defense Systems, 14 Jul 86, incorporates DOD Directive 4105.62, 9 Sep 85. Paragraph D.3.d. of the DOD Directive directs that the Source Selection Authority (SSA) prevent the premature or unauthorized disclosure of source selection information during the source selection process. Most Navy source selection guides address procedures for safeguarding data during the source selection process.

FAR 15.1003 provides guidance with regard to what data may be released when debriefing unsuccessful offerors. Similar guidance is reiterated in Navy source selection guides. Release of actual evaluation materials after award can also be considered to be covered within the prohibition listed at FAR 5.401(b)(4), governing release to the public of internal agency communications, including technical reviews. FOIA also applies.

c. Decision Maker on Public Release.

SECNAVINST 4200.33 designates the SSA as the authority to authorize release of source selection sensitive data and information.

d. Factors Influencing Decision to Release/Not Release.

Evaluation materials are not released prior to award. Even after award they are generally not released since to do so would tend to discourage the evaluation from expressing their candid opinions during the evaluation process. Exception (b)(5) under the FOIA applies in this regard. An exception to this non-disclosure practice sometimes occurs when a protest is filed with the General Accounting Office and release is compelled by the GAO or is otherwise necessary to enable the procuring activity to defend against the protest.

FOR OFFICIAL USE ONLY (FOUO) DOCUMENTS

1. Description. Navy Regulation 1116(d) (32 CFR Section 700.1116(d)), "Disclosure and Publication Information," states that "the term For Official Use Only ... may be used to identify material or records not to be released to the general public." In addition, Section 4-100 of DoD Directive 5400.7-R, "DoD Freedom of Information Act Program", states the following: "Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA Exemptions 2 through 9 shall be considered as being For Official Use Only. No other material shall be considered or marked "For Official Use Only" (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests." [Emphasis in original.]

2. Regulations Governing Public Release.

DOD 5220.22-R, "Industrial Security Regulation" (Dec 85), at paragraph 7-108 states that if such classified information is provided to a contractor, specific notification with regard to protection of the information should be addressed in a separate contract clause or by other official correspondence. In addition, while industrial security inspections do not normally review contractor compliance with required FOUO safeguards, the Contracting Officer may request such a compliance review.

3. Decision Maker on Public Release.

The person who made the initial determination that a document be designated FOUO would normally be the person to determine whether or not such document should be released.

4. Factors Influencing Decision to Release/Not Release.

For FOIA requests, the Act provides no specific exemption for documents marked FOUO. Accordingly, release must be considered in light of the specific exemptions set forth in the Act and other considerations discussed previously with respect to particular types of documents which may be marked FOUO.

DEPARTMENT OF THE NAVY
OFFICE OF THE UNDER SECRETARY
WASHINGTON, D.C. 20350-1000

Mr. Peter Levine
Counsel
Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs
Hart Senate Office Building, Room 442
Washington, D.C. 20510-6260

Dear Mr. Levine:

This supplements our letter of January 18, 1989 responding to Senator Levin's December 16, 1988 request for information on the issue of "inside information" and the appropriate scope of disclosure of procurement and planning information to private contractors.

In our January 18 response to Item A we provided a list of the Navy's existing rules and regulations, which we supplemented in our letter of February 3 to Senator Levin. Enclosed Attachment A further supplements our original list of rules and regulations. This second supplemental list contains instructions which implement Navy policy and regulation at the Systems Command level.

Please call me at 694-5066 with any questions you may have.

Sincerely,

Chester Paul Beach, Jr.
Special Assistant to the
Under Secretary

Attachment

SECOND SUPPLEMENTAL LIST
TO
DEPARTMENT OF THE NAVY
RULES AND REGULATIONS REGARDING
DISCLOSURE OF PROCUREMENT AND
PLANNING INFORMATION TO PRIVATE CONTRACTORS

Attachment A
15 February 1989

SPACE AND NAVAL WARFARE SYSTEMS COMMAND
(Supplemental)

Contracts Directorate Instruction 4295.2E, 1 August 1988; Subj: Dissemination of Procurement Information.

This instruction establishes procedures in SPAWAR 12 for the processing of, and responding to, requests for information under the Freedom of Information Act (FOIA).

Contracts Directorate Instruction 5570.1A, 8 September 1977; Subj: Control Over Sensitive Business Information.

This instruction updates procedures for maintaining adequate security over sensitive business information.

NAVAL SUPPLY SYSTEMS COMMAND
(Supplemental)

Memorandum, Commander Naval Supply Systems Command (NAVSUP), 18 November 1988, Subj: Protection of Business Sensitive Information.

Makes clerical and typographical corrections to Memorandum, Commander, Naval Supply Systems Command (NAVSUP), 24 October 1988, Subj: Protection of Business Sensitive Information, which reminds all Navy Field Contracting System personnel of the need to protect the release of business sensitive information.

NAVSUP Instruction 4200.79A Change Transmittal 1, 23 June 1988, Subj: Competitive Source Evaluation and Selection For Other Than Major Defense Systems Acquisitions.

Transmits a change to the basic instruction in the approving official for membership of nongovernment personnel on evaluation committees or in advisory capacities.

DEPARTMENT OF THE NAVY
OFFICE OF THE UNDER SECRETARY
WASHINGTON, D.C. 20350-1000

23 February 1989

Mr. Peter Levine
Counsel
Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs
Hart Senate Office Building, Room 442
Washington, D.C. 20510-6260

Dear Mr. Levine:

This supplements our letter of February 3, 1989 responding to Senator Levin's December 16, 1988 request for information on the issue of "inside information" and the appropriate scope of disclosure of procurement and planning information.

In our February 3 response to Item D, which asked whether, and in how many cases, the Navy has taken any disciplinary action against Navy officials in the last five years for improper disclosure of procurement or planning information, we recited the number six. You recently requested additional information pertaining to those six actions. Attachment A sets forth a brief summary of the facts giving rise to the disciplinary action in each of these six cases.

Please call me at 694-5066 with any questions you may have.

Sincerely,

Chester Paul Beach, Jr.
Special Assistant to the
Under Secretary

Attachment

ACTIONS TAKEN DUE TO IMPROPER DISCLOSURE OF PLANNING OR PROCUREMENT INFORMATION

Attachment A
23 February 1989

1. Naval Sea Systems Command (NAVSEA)

a. NAVSEA Headquarters:

(1) On June 1, 1988, a NAVSEA employee received a letter of reprimand for the improper disclosure of source selection information. This situation involved an employee who disclosed technical evaluation scores as well as contractor cost proposal information to a former NAVSEA employee who in turn divulged this information to one of the competing contractor's employees. The employee admitted divulging the information and received a letter of reprimand as a result. He retired from NAVSEA 6 June 1988.

(2) In 1986, a contractor protested a pending contract award before the selection was publicly announced. The Contracting Officer requested the NAVSEA Inspector General (IG) to investigate the apparent breach of source selection security. It was alleged that a NAVSEA employee who overheard the source selection decision while at his desk repeated it to a friend employed by the protestor. The employee claimed he thought the decision had been publicly announced. The employee received a verbal admonition since the IG could not conclude that his disclosure was the basis of the protest, which was brought on unrelated grounds.

b. NAVSEA Field Activities:

(1) An employee of the Naval Ordnance Station, Indian Head, Maryland, was reprimanded for disclosing procurement information. The employee discussed future plans for contracts, early delivery of printed circuit cards and estimated costs. This was done before the Supply Department was advised of any change in the scope of the contract. The employee also discussed the financial status of another program with an outside entity. When interviewed, the employee admitted having divulged such information to the contractor and as a result was reprimanded.

2. Naval Supply Systems Command

a. Navy Field Contracting System (NFCS)

(1) Inadvertent misaddressing of letters requesting Best and Final Offers caused one offeror to receive information concerning another offeror's deficiencies and vice-versa. Personnel involved received counseling and mailing procedures were reviewed.

(2) On two separate occasions, business clearance memoranda containing cost information were inadvertently mailed

to a contractor, thereby giving the recipient access to its competitor's data. Employees involved were orally admonished.

(3) A summary technical evaluation of all offerors' proposals was inadvertently released to one offeror. Oral admonishment and counseling to employee resulted.

DEPARTMENT OF THE AIR FORCE
WASHINGTON, D.C. 20330

OFFICE OF THE SECRETARY

The Honorable Carl Levin
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510-0001

Dear Mr. Chairman:

This is in response to your letter of December 16, 1988, asking for Air Force policies on disclosure of procurement and planning information. In June 1988, Secretary Carlucci appointed an OSD Task Force to address issues related to the "Ill Wind" investigation. The Task Force charter includes reviewing the rules on protection of information and proposing any changes necessary to address inadequacies. The Air Force is supporting this OSD review. This response is based on a preliminary review within the Air Force and not on results from a coordinated review with OSD.

You posed four questions, which are answered below. You also asked three questions related to a specific list of documents. Responses to these are provided as Attachment 2.

"1. Please list all existing rules and regulations of the Air Force regarding the disclosure of procurement and planning information to private contractors."

A list and a copy of Air Force rules, regulations and other written guidance regarding the disclosure of procurement and planning information are provided at Attachment 1.

"2. Does the Air Force believe that existing rules and regulations give adequate guidance to Air Force officials and private contractors and consultants as to what types of information may and may not be disclosed?"

In determining adequacy of guidance, Air Force rules and regulations must be viewed in conjunction with the Federal Acquisition Regulation (FAR), the Defense supplement to it (DFARS) and other DoD-wide guidance. Within that context, we believe that Air Force rules and regulations provide adequate guidance for the vast majority of situations involving access to documents and information that legitimately arise in the acquisition process. In the light of the Ill Wind investigation, we will continue to re-evaluate our positions and work with OSD on the review of DoD and Service policies and procedures.

"3. Has the Air Force undertaken any review of its document disclosure policies and practices in light of the "Ill Wind" investigation? If so, please outline the steps that have been taken and the additional steps that are planned to complete this review."

In June 1988 the Air Force conducted an initial review of Air Force rules and regulations on the disclosure and protection of procurement and planning information and provided the results to the OSD Task Force, which we continue to support in its review on uniform, Department-wide policies. An integrated assessment of the adequacy of Air Force regulations is most appropriate after the OSD review is completed.

"4. Other than any action that may have been taken in response to the 'Ill Wind' investigation, has the Air Force taken any disciplinary action against Department officials in the last five years because of improper disclosure of procurement or planning information to a private contractor? If so, in how may cases has such action been taken?"

The Air Force does not track "improper disclosure of procurement or planning information to a private contractor" as a category of disciplinary action. Therefore, a detailed case by case analysis would be required to answer this question precisely. However, we are aware of nine specific cases in the last five years in which disciplinary action has been taken expressly for the cause stated.

Our objective in reviewing this important area is to strike a balance between releasing information and protecting the integrity of the acquisition process. OSD will provide you with a copy of the results of the DoD review, when completed.

Sincerely,

TIMOTHY L. TITUS
Colonel, USAF
Chief, Program Liaison Division
Office of Legislative Liaison

Attachments

ATTACHMENT 2

ACQUISITION DOCUMENTS

NOTE: As requested, this attachment provides information regarding Air Force policy on the documents specified in your letter; therefore, existing federal or DoD-level guidance generally is not cited. It should also be noted that, although AFRs 12-30 (Air Force Freedom of Information Act Program) and 205-1 (Information Security Program Regulation) may have applicability to all these documents, they are generally listed under "Applicable Air Force Rules and Regulations" only when they are the sole or primary regulations pertaining to release of the information.

ACQUISITION DOCUMENTS

CATEGORY: Planning and Budgetary Information

DOCUMENT(S):

Program Objective Memorandum (POM's)
Five Year Defense Plans (FYDP's)
Program Element Descriptive Summaries (PED's)
Budget Estimate Submissions (BES's)
Program Decision Memorandum (PDM's)
Program Budget Decisions (PBD's)
Program Decision Package (PDP's)
Draft of above documents

CURRENT AIR FORCE POSITION:

The Air Force and DoD position regarding the release of program and budget documents (which all of the above documents contain) is contained in a 27 Feb 86 OSD Memorandum; namely, "...Release of Five Year Defense Program (FYDP) (or Six Year Defense Program (SYDP)) data outside of the Department of Defense is unauthorized without the expressed written consent of this office (Assistant Secretary of Defense, Comptroller). This restriction applies not only to information from published FYDP (SYDP) documents and FYDP (SYDP) database maintained by this organization (Office of Secretary of Defense), but to equivalent documents and data produced and maintained by the Components as well."

SAF/AC3 has been using a Draft Security Classification Guide regarding the disclosure of information or documents to contractors. The disclosure is not left to the discretion of individual officials within the Air Force.

Additional guidance is provided in AFR 205-1, para 7-100. Simply stated, the document requested must be "essential to the accomplishment of government business" by the requesting activity and a legitimate need to know must be established. The aforementioned documents are DoD internal management plans which "represent goals and objectives within approved resources levels"; there is generally no need for contractors to obtain them. The exception would be in the case of contractors who have been hired to do analysis of FYDP data.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

Draft Security Classification Guide
AFR 205-1

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:

Disclosure is not left to the discretion of individual officials within the AF. They are required to use the Draft Security Classification Guide, OSD Memo and AFR 205-1.

ACQUISITION DOCUMENTS

CATEGORY: Needs/Requirements Information

DOCUMENT: Statements of Need (SONs)

CURRENT AIR FORCE POSITION:

Statements of need are released to government contractors through the Air Force Information for Industry Offices. Document originators remove non-releasable information as specified in AFR 80-11. Classified SONs are released based upon a need to know and appropriate contractor clearances.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFR 57-1
AFR 80-11
AFR 205-1

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:

As determined by HQ USAF/XOXQQ, the responsible official.

ACQUISITION DOCUMENTS

CATEGORY: Needs/Requirements Information

DOCUMENT: Justifications for Major System New Starts (JMNS's)

CURRENT AIR FORCE POSITION:

Mission-Need Statements have replaced the JMNS's.

Mission-Need Statements (MNS) are not released to contractors. The validated Statement of Need (SON) which is a prerequisite for HQ USAF preparation of a MNS is released to contractors through the Air Force Information for Industry Offices.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFR 57-1

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:

As determined by HQ USAF/XOXQQ, the responsible official.

ACQUISITION DOCUMENTS

CATEGORY: Needs/Requirements Information

DOCUMENT: Operation Requirements (ORs)

CURRENT AIR FORCE POSITION:

The System Operational Requirement Document (SORD) is the requirements and planning document to address operational and support needs. The SORD is releasable to government contractors through the Air Force Information for Industry Offices.

Document originators are responsible for removing non-releasable information IAW the criteria contained in AFR 80-11.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFR 57-1
AFR 80-11

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:

As determined by HQ USAF/XOXQQ, the responsible official.

ACQUISITION DOCUMENTS

CATEGORY: Needs/Requirements Information

DOCUMENT: Issue Papers and Responses

CURRENT AIR FORCE POSITION:

Fact Issue Papers

- Fact Issue Papers (FIPs) are used as study materials for SECAF and CSAF during hearing preparation. FIPs are for internal Air Force use only and are not released to anyone outside HQ USAF.

Air Force Issue Book

- Air Force Issue Book is an unclassified compilation of papers on high-interest issues. This book is distributed to senior Air Force spokespersons and would be available to the public upon request.

Budget/Program Fact Papers

- Budget/Program Fact Papers (B/PFPs) are information materials stating the Air Force position on programs and issues. They are provided to members of Congress during budget markup. The Air Force does not provide to contractors.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

None

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:

As determined by AF/CVAZ, the responsible official.

ACQUISITION DOCUMENTS

CATEGORY: Needs/Requirements Information

DOCUMENT: R and D Master Plans

CURRENT AIR FORCE POSITION:

The Air Force Acquisition Statement has replaced the R and D Master Plans. The Air Force Acquisition Statement summarizes the RDT&E, procurement, and support programs necessary to address operational requirements. This is presented annually to Congress and is available to contractors upon request.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

None

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:

As determined by SAF/AQXA, the responsible official.

ACQUISITION DOCUMENTS

CATEGORY: Needs/Requirements Information

DOCUMENT: Service Master Plan

CURRENT AIR FORCE POSITION:

The Air Force does not generate a document titled "Service Master Plan." Further explanation is required to determine if the data may be contained in other Air Force documents.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

N/A

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:

N/A

ACQUISITION DOCUMENTS

CATEGORY: Needs/Requirements Information

DOCUMENT: Mission Area Plans

CURRENT AIR FORCE POSITION:

Mission Area Plans are replacing HQ AFSC's Vanguard long range planning process. HQ AFSC is in the process of determining applicable policies and procedures.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

None in existence at this time.

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:

As determined by HQ AFSC/XTXR, the responsible official.

ACQUISITION DOCUMENTS

CATEGORY: Needs/Requirements Information

DOCUMENT: Integrated Priority Lists

CURRENT AIR FORCE POSITION:

Integrated Priority Lists are internal AF working documents and are not releasable to government contractors.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

A February 1987 DEPSECDEF message reiterates the long-standing policy that PPBS materials are not released outside the DoD.

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:

None

ACQUISITION DOCUMENTS

CATEGORY: Needs/Requirements Information

DOCUMENT: Feasibility Studies

CURRENT AIR FORCE POSITION:

Studies are released on a case by case basis and a need to know. Document originator makes determination for each study generated.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFR 12-30
AFR 205-1

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:

As determined by AF/SA, the responsible official.

ACQUISITION DOCUMENTS

CATEGORY: Needs/Requirements Information

DOCUMENT: Threat Analyses

CURRENT AIR FORCE POSITION:

A Director of Central Intelligence Directive prohibits the government from providing contractors with intelligence information unless they are on contract. A contractor under contract receives a system threat assessment report (STAR) from the Air Force contract monitor. The STAR is the single authoritative reference for threat information pertaining to the acquisition program.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFR 200-13
AFR 57-1

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:

As determined by HQ USAF/IN, the responsible official.

ACQUISITION DOCUMENTS

CATEGORY: Needs/Requirements Information

DOCUMENT: Drafts of Above Documents

CURRENT AIR FORCE POSITION:

The Air Force does release draft SONs and SCRDs for information to government contractors through the Air Force Information for Industry Offices. Non-releaseable information is removed by the originator IAW AFR 80-11. Drafts of the other documents contained in this category are not released.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFR 57-1
AFR 80-11

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:

As determined by HQ USAF/XOXQQ, the responsible official.

ACQUISITION DOCUMENTS

CATEGORY: Technical Data on Specific Procurements

DOCUMENT: Technical Studies and Reports

CURRENT AIR FORCE POSITION:

Originators determine and place distribution statements on technical documents to show they are releasable to the public or must be controlled. Contractors are eligible to receive scientific and technical information (studies and reports) from the DoD data bank located at the Defense Technical Information Center IAW AFR 80-44.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFR 80-44
AFR 80-45
AFR 80-34
AFR 205-1

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:

As determined by the originator of the document and policy contained in AFR 80-44.

ACQUISITION DOCUMENTS

CATEGORY: Technical Data on Specific Procurements

DOCUMENT: Test Plans and Reports

CURRENT AIR FORCE POSITION:

Test plans and reports are reviewed for proper security classification and are assigned the proper distribution statement IAW AFR 55-43 and 80-45. Final test reports' distribution is IAW AFR 55-43, Section 9-13.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFR 55-43
AFR 80-45

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:

As determined by the test manager IAW AFR 55-43 and AFR 80-45 and HQ AFOTEC/HO.

ACQUISITION DOCUMENTS

CATEGORY: Technical Data on Specific Procurements

DOCUMENT: Failure Analyses

CURRENT AIR FORCE POSITION:

Failure Analyses are released to contractors on a case by case basis. They are evaluated for releasibility based upon whether they contain propriety information, source election sensitive information or classified information.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFR 80-45
AFR 205-1

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:

As determined by the Test Manager, the responsible agent.

ACQUISITION DOCUMENTS

CATEGORY: Technical Data on Specific Procurements

DOCUMENT: Draft Specifications

CURRENT AIR FORCE POSITION:

Draft specifications are released with the draft RFP to all interested parties. Releasability is governed by the same FAR 14.211 and security guidelines as those for "final" RFPs.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

None (except as related to classification and security).

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:

As specified in the FAR and AFR 205-1, Chpater VII.

ACQUISITION DOCUMENTS

CATEGORY: Technical Data on Specific Procurements

DOCUMENT: Statements of Work (SOW)

CURRENT AIR FORCE POSITION:

After the Commerce Business Daily announces the procurement, Statements of Work are releasable to firms and/or individuals who request them and possess any required security clearance.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFR 205-1, Chapter VII

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:

As determined by the Program Office and/or the contracting officer.

ACQUISITION DOCUMENTS

CATEGORY: Technical Data on Specific Procurements

DOCUMENT: Procurement Requests

CURRENT AIR FORCE POSITION:

Procurement requests are marked For Official Use Only (FOUO) and are not released to industry.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFR 205-1, Chapter VII
AFR 12-30, Sections B and C

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:

IAW AFR 12-30 and AFR 205-1.

ACQUISITION DOCUMENTS

CATEGORY: Technical Data on Specific Procurements

DOCUMENT: Draft RFPs (including early drafts not formally circulated pursuant to the FAR)

CURRENT AIR FORCE POSITION: Releasibility to contractors of draft RFPs is governed by the same FAR and security guidelines as those for "final" RFPs, including the FAR 14.211 requirement that information provided to one contractor must be provided to all interested contractors. There is no policy specifically addressing early drafts not formally circulated pursuant to the FAR.

APPLICABLE AIR FORCE RULES AND REGULATIONS: Use of draft RFPs is addressed in AFRs 70-15 and 70-30, but there is no guidance specifically addressing release of draft RFPs.

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA: In accordance with guidance dealing with "finalized" documents.

ACQUISITION DOCUMENTS

CATEGORY: Procurement Planning Information

DOCUMENT: Acquisition Plans

CURRENT AIR FORCE POSITION: Acquisition Plans are marked "For Official Use Only (FOUO)" or with appropriate higher classification markings. Release of such information is dependent upon the need-to-know and applicable classification guidance.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFFARS Subpart 7.1

AFR 205-1, Chapter VII

AFR 12-30, Sections B and C

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA: In accordance with AFRs 205-1 and 12-30.

ACQUISITION DOCUMENTS

CATEGORY: Procurement Planning Information

DOCUMENT: Source Selection Plans

CURRENT AIR FORCE POSITION: The Source Selection Plan is marked "For Official Use Only" (or appropriate higher classification) and "Source Selection Sensitive". Access is limited to those with a strict need-to-know who have certified they have no conflict of interest.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFR 70-15 - Chapter 4

AFR 70-30 - Section D

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA: While source selection is in process, disclosure of source selection information is the exclusive responsibility of the Source Selection Authority. After contract award, authority is vested in the: a) Head of the Contracting Activity commander or b) the commander or vice commander of the organization having acquisition responsibility for the contract, as specified in the applicable regulation. Criteria are stipulated in AFR 12-30, Section B.

ACQUISITION DOCUMENTS

CATEGORY: Procurement and Planning Information

DOCUMENT: Current Funding Profiles

CURRENT AIR FORCE POSITION:

Current funding profiles are not releasable to government contractors IAW DoD policy and an February 1986 OSD memorandum on release of Five Year Defense Program Data.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

None

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:

None

ACQUISITION DOCUMENTS

CATEGORY: Procurement Planning Information

DOCUMENT: Cost Models

CURRENT AIR FORCE POSITION:

Releasability of cost models to contractors is determined on a case by case basis, depending on whether the requester has a DoD contract and the document has classified or proprietary information.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFR 205-1, Chapter VII
AFR 12-30, Sections B and C

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:

As determined by SAF/AC, the responsible official.

ACQUISITION DOCUMENTS

CATEGORY: Procurement Planning Information

DOCUMENT: Should Cost Studies

CURRENT AIR FORCE POSITION: Should Cost Studies are marked "For Official Use Only - Negotiation Sensitive". Release of such information to contractors (other than the one on which the should cost is being conducted) is not permitted; this determination is supported by the Freedom of Information Act.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFP 70-5 (currently under revision)

AFR 12-30, Section B

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA: Only the Should Cost team chief (during the review) or the Contracting Officer (once the study has been concluded) may release information about the study to the contractor being reviewed or to other government organizations.

ACQUISITION DOCUMENTS

CATEGORY: Procurement Planning Information

DOCUMENT: Life Cycle Cost Studies

CURRENT AIR FORCE POSITION:

Releasability is determined on a case by case basis depending on whether the requester has a DoD contract and the document has classified or proprietary information.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFR 205-1, Chapter VII
AFR 12-30, Sections B and C

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:

As determined by SAF/AC, the responsible official.

ACQUISITION DOCUMENTS

CATEGORY: Procurement Planning Information

DOCUMENT: Internal Government Cost Estimates

CURRENT AIR FORCE POSITION:

Releasability is determined on a case by case basis depending on whether the requester has a DoD contract and the document is classified or contains proprietary information.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFR 205-1, Chapter VII
AFR 12-30, Sections B and C

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:

As determined by SAF/AC, the responsible official.

ACQUISITION DOCUMENTS

CATEGORY: Procurement Planning Information

DOCUMENT: Drafts of procurement planning documents (as specified)

CURRENT AIR FORCE POSITION: Drafts of these documents are generally not releasable; however, a case by case analysis, based on the guidance applicable to the "final" documents, is conducted if the documents are requested.

APPLICABLE AIR FORCE RULES AND REGULATIONS: None specifically dealing with release of documents in draft form.

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA: In accordance with guidance dealing with "finalized" documents.

ACQUISITION DOCUMENTS

CATEGORY: Source Selection Information

DOCUMENT: Bidders/Offerors List (Note: We have interpreted this term to mean "Solicitation Mailing Lists", as defined in FAR 14.205.)

CURRENT AIR FORCE POSITION: Mailing lists are available in response to written requests made in accordance with the Freedom of Information Act (FOIA).

APPLICABLE AIR FORCE RULES AND REGULATIONS: None (except for AFR 12-30 on the FOIA Program) - Adequate coverage is provided by FAR 14.205.

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA: In accordance with AFR 12-30, Sections B and C.

ACQUISITION DOCUMENTS

CATEGORY: Source Selection Information

DOCUMENT: Past Suppliers List (We interpret this to mean procurement history.)

CURRENT AIR FORCE POSITION: Procurement history - name(s) of successful contractors, items/quantities on contract, value of contract, date awarded - is available to contractors, though negotiation sensitive/proprietary data is not releasable.

APPLICABLE AIR FORCE RULES AND REGULATIONS: None (except for AFR 12-30 on the FOIA Program) - Note: Availability of information regarding past suppliers/successful offerors is also discussed under the document entitled "Identities of Actual Bidders".

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA: In accordance with AFR 12-30, Sections B and C.

ACQUISITION DOCUMENTS

CATEGORY: Source Selection Information

DOCUMENT: Bid Intent List (Note: We interpret this to mean a list of bidders/offerors who have expressly indicated that they intend to submit an offer.)

CURRENT AIR FORCE POSITION: The Air Force does not maintain a "bid intent list", inasmuch as contractors do not have to notify us of their intent to submit an offer to a solicitation; even those who have expressly requested a copy of a solicitation - which they may or may not have obtained directly from the contracting office - may decide not to respond.

APPLICABLE AIR FORCE RULES AND REGULATIONS: None (except for AFR 12-30 on the FOIA Program)

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA: In accordance with AFR 12-30, Sections B and C.

ACQUISITION DOCUMENTS

CATEGORY: Source Selection Information

DOCUMENT: Identities of Actual Bidders (Note: We interpret this term to include both bidders and offerors.)

CURRENT AIR FORCE POSITION: For acquisitions solicited under sealed bidding procedures, the bid abstract/record of bids is available in accordance with FAR 14.408. For negotiated acquisitions, the identity of competitors is considered "For Official Use Only" in the pre-award phase. After award, information on the successful offeror is made known in accordance with FAR 15.1001. In source selections over $50 million, names of unsuccessful offerors are also made public.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFR 70-15 - Chapter 4

AFR 70-30 - Section C

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA: While source selection is in process, disclosure of source selection information is the exclusive responsibility of the Source Selection Authority. After contract award, for information other than that covered in FAR 15.1001, authority is vested in the: a) Head of the Contracting Activity commander or b) vice commander of the organization having acquisition responsibility for the contract, as specified in the applicable regulation. Criteria are stipulated in AFR 12-30, Section B.

ACQUISITION DOCUMENTS

CATEGORY: Source Selection Information

DOCUMENT: Identities of Bidders in Competitive Range (Note: We interpret the term "bidders" to mean "offerors", since a competitive range determination is not applicable to sealed bidding.)

CURRENT AIR FORCE POSITION: This information is "For Official Use Only" and "Source Selection Sensitive", since this data is part of the source selection action. Access is limited to those with a strict need-to-know who have certified they have no conflict of interest.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFR 70-15, Chapter 4

AFR 70-30, Section D

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA: While source selection is in process, disclosure of source selection information is the exclusive responsibility of the Source Selection Authority. After contract award, authority is vested in the: a) Head of the Contracting Activity commander or b) vice commander of the organization having acquisition responsibility for the contract, as specified in the applicable regulation. Criteria are stipulated in AFR 12-30, Section B.

ACQUISITION DOCUMENTS

CATEGORY: Source Selection Information

DOCUMENT: Source Selection Advisory Council Members (We interpret this to mean any document specifying members of the Source Selection Advisory Council for a particular acquisition.)

CURRENT AIR FORCE POSITION: Documentation establishing council membership is marked "For Official Use Only" and also must be marked "Source Selection Sensitive". Access is limited to those with a strict need-to-know who have certified they have no conflict of interest.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFR 70-15, Chapter 4

AFR 70-30, Section D

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA: While source selection is in process, disclosure of source selection information is the exclusive responsibility of the Source Selection Authority. After contract award, authority is vested in the: a) Head of the Contracting Activity commander or b) vice commander of the organization having acquisition responsibility for the contract, as specified in the applicable regulation. Criteria are stipulated in AFR 12-30, Section B.

ACQUISITION DOCUMENTS

CATEGORY: Source Selection Information

DOCUMENT: Source Selection Evaluation Board Members (We interpret this to mean any document specifying the members of the Source Selection Board Evaluation for a specific acquisition.)

CURRENT AIR FORCE POSITION: Documentation establishing board membership is marked "For Official Use Only" and "Source Selection Sensitive". Access is limited to those with a strict need-to-know who have certified they have no conflict of interest.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFR 70-15, Chapter 4

AFR 70-30, Section D

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA: While source selection is in process, disclosure of source selection information is the exclusive responsibility of the Source Selection Authority. After contract award, authority is vested in the: a) Head of the Contracting Activity commander or b) vice commander of the organization having acquisition responsibility for the contract, as specified in the applicable regulation. Criteria are stipulated in AFR 12-30, Section B.

ACQUISITION DOCUMENTS

CATEGORY: Source Selection Information

DOCUMENT: Source Selection Authority (We interpret this to mean a document specifying the Source Selection Authority for a particular acquisition.)

CURRENT AIR FORCE POSITION: This information is unclassified and releasable.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFR 70-15, Chapter 4

AFR 70-30, Section D

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:
N/A

ACQUISITION DOCUMENTS

CATEGORY: Source Selection Information

DOCUMENT: Evaluation Criteria (including numerical weightings, assessment criteria, known discriminators, and objective standards)

CURRENT AIR FORCE POSITION: Evaluation factors - including price or cost and any significant subfactors, along with minimum requirements that apply to particular evaluation factors and significant subfactors - shall be clearly stated in solicitations, as shall the relative importance of those factors and subfactors (as stated in the FAR). Weights and standards used in the evaluation are "For Official Use Only" and "Source Selection Sensitive"; access is limited to those with a strict need-to-know who have certified they have no conflict of interest.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFR 70-15, Chapter 4

AFR 70-30, Section D

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA: While source selection is in process, disclosure of source selection information is the exclusive responsibility of the Source Selection Authority. After contract award, authority is vested in the: a) Head of the Contracting Activity commander or b) vice commander of the organization having acquisition responsibility for the contract, as specified in the applicable regulation. Criteria are stipulated in AFR 12-30, Section B.

ACQUISITION DOCUMENTS

CATEGORY: Source Selection Information

DOCUMENT: Actual Evaluation Materials (after award)

CURRENT AIR FORCE POSITION: Evaluation materials are "For Official Use Only" and "Source Selection Sensitive". Access is limited to those with a strict need-to-know who have certified they have no conflict of interest.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFR 70-15, Chapter 4

AFR 70-30, Section D

AFLC FAR Supplement, Subpart 15.6

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA: While source selection is in process, disclosure of source selection information is the exclusive responsibility of the Source Selection Authority. After contract award, authority is vested in the: a) Head of the Contracting Activity commander or b) vice commander of the organization having acquisition responsibility for the contract, as specified in the applicable regulation. Criteria are stipulated in AFR 12-30, Section B.

ACQUISITION DOCUMENTS

CATEGORY: For Official Use Only (FOUO) Documents

DOCUMENT: ---

CURRENT AIR FORCE POSITION: FOUO documents may be exchanged between DoD and contractors to conduct official business for DoD. Recipients must be made aware of the status of the information and the material must be handled in such a way as to prevent unauthorized public disclosure.

APPLICABLE AIR FORCE RULES AND REGULATIONS:

AFR 12-30, Sections B and C

FOR DISCRETIONARY DECISIONS, RESPONSIBLE OFFICIAL AND CRITERIA:
As specified in AFR 12-30.

INFORMATION ON DISCIPLINARY ACTIONS TAKEN

Our January 19 reply to Senator Levin stated that the Air Force could identify nine (9) cases that dealt specifically with improper release of procurement or planning information. Upon further investigation, it was determined that the three (3) Air Force cases cited by OSD in its response were inaccurately identified and partially duplicated our initial information. Our revised review indicates seven (7) cases that we can specifically relate to improper information disclosure; further details on these are listed below. (Note: Disciplinary action taken depended upon the circumstances surrounding the particular action.)

1. GM-13, Deputy Program Manager for Logistics on a missile decoy program

Provided a contractor with source selection documents in return for compensation.

Suspended without pay during investigation. Pleaded guilty, but not punished because he cooperated in investigation. Subsequently resigned.

2. GS-12, budget analyst on same missile decoy program (see #1)

Involved in providing contractor with source selection documents in return for compensation.

Suspended without pay; resigned before the investigation was completed. Pleaded guilty to bribery and conspiracy; sentenced to one year in prison (served two months), fined $50 and required to perform community service.

3. GS-14, industrial engineer

Attempted to obtain payment in return for helping contractors obtain Air Force contracts.

Removed from federal service.

4. Master Sergeant

Disclosed sensitive bid information to a contractor.

Received a suspended reduction to Technical Sergeant and forfeited $1,400. Took early retirement.

5. GS-12, logistician

Provided a copy of a sanitized draft of a Program Management Directive and the Automated Management Information System computer printout of a program to a contractor.

Suspended for 12 days.

6. Engineer

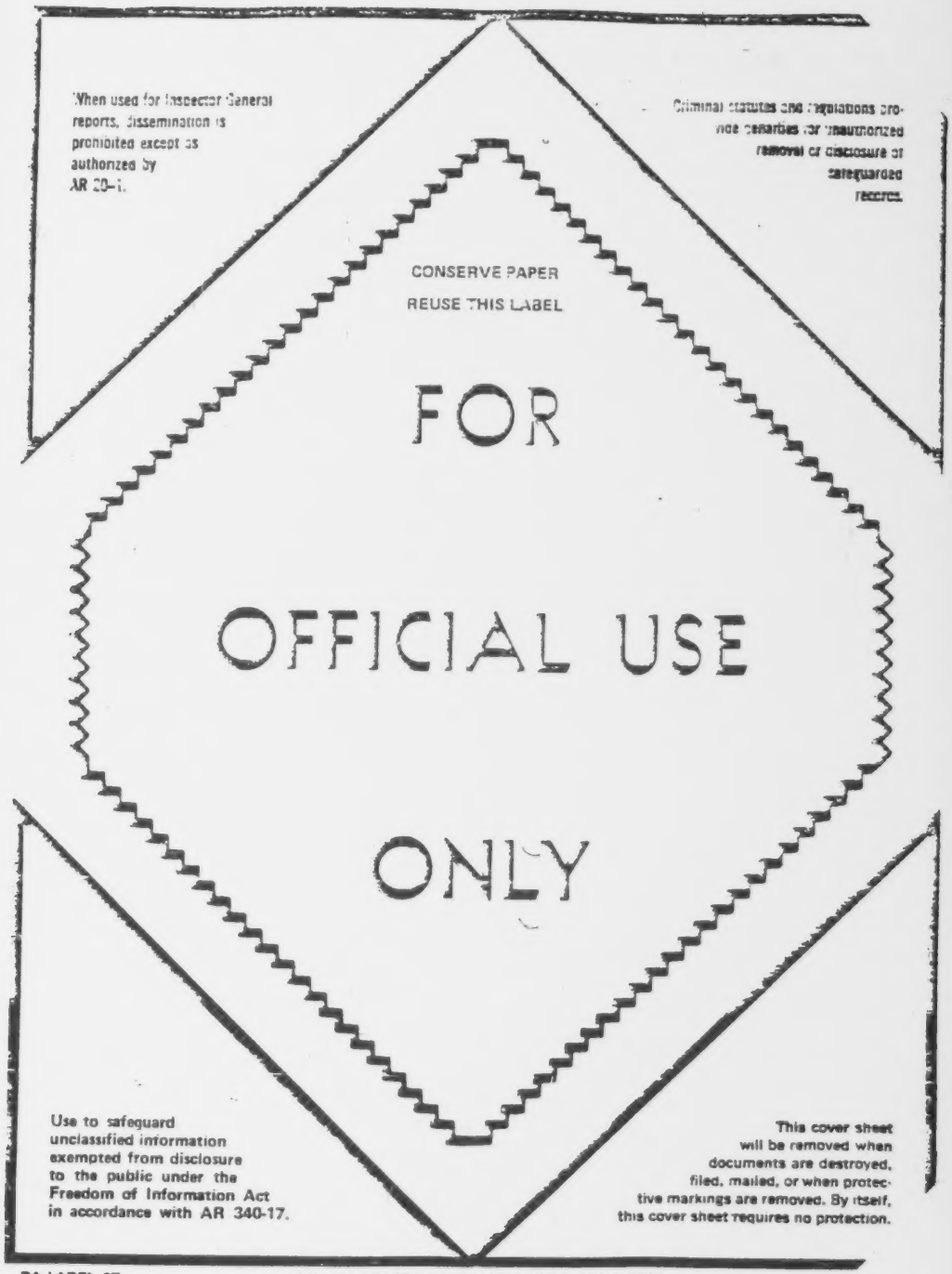
Provided an advance copy of a statement of work to a friend who worked for a contractor.

Received a written letter of reprimand.

7. GM-15, chairman of a proposal evaluation board

Engaged in improper communication with one of the competing firms, to the effect that cost was a consideration and the firm should lower its price.

Received a written letter of reprimand. (Investigation showed that the irregularity did not alter the source selection outcome.)


When used for Inspector General reports, dissemination is prohibited except as authorized by AR 20-1.
Criminal statutes and regulations provide penalties for unauthorized removal or disclosure of safeguarded records.
CONSERVE PAPER
REUSE THIS LABEL
FOR
OFFICIAL USE
ONLY
Use to safeguard unclassified information exempted from disclosure to the public under the Freedom of Information Act in accordance with AR 340-17.
This cover sheet will be removed when documents are destroyed, filed, mailed, or when protective markings are removed. By itself, this cover sheet requires no protection.

DA LABEL 37
APR 82

EDITION OF FEB 73 WILL BE USED UNTIL EXHAUSTED.

DEPARTMENT OF THE ARMY
PERSONNEL, SAFETY, AND SECURITY-WASHINGTON
WASHINGTON, DC 20310-6800

07 Feb 1989

REPLY TO ATTENTION OF JDPSS-SO

MEMORANDUM FOR THE ADMINISTRATIVE ASSISTANT TO THE SECRETARY OF THE ARMY

SUBJECT: Alleged Unauthorized Release of POM Information to A Commercial Concern

During July 1988, the Honorable Jay R. Sculley, Assistant Secretary of the Army for Research, Development and Acquisition (SARDA), requested a security inquiry into the facts and circumstances surrounding the disclosure of certain elements of the 1988 Program Objective Memorandum (POM) to a publication entitled, "INSIDE THE PENTAGON."

On 7 July 1988, I interviewed Dr. Sculley and obtained a copy of INSIDE THE PENTAGON, printed 2 May 1988 with the headlines, 'SPECIAL REPORT - ARMY's FY 90-94 R7D BUDGET PLAN." A copy of that report is appended. Further interview of Dr. Sculley disclosed that pertinent portions of the article contained information which should not have been released outside the DOD channels. Although Dr. Sculley could not precisely point out words, sentences or portions of the article he considered classified, he did state that the contents, when integrated, became very sensitive. He requested that my office look into the matter and specifically asked for the following investigative steps to be taken:

1. Ascertain if any portions of the article were classified

2. Ascertain if any portions were sensitive

3. Ascertain who gave the information to INSIDE THE PENTAGON

4. Ascertain if any contractors were involved in the disclosure.

I immediately briefed Mr. PETER B. STEIN, Deputy Adminis trative Assistant of Dr. Sculley's concern and Stein directed me to Col Robert B. Cato, Chief of the Program Directorate, Program Analysis and Evaluation Division, Office of the Chief of Staff.

On 8 Jul 88, I interviewed Col. Cato concerning the article and solicited his viewpoint on the contents of the article, as well as his opinion of how the information was disclosed. Cato replied that the POM is an aggregation of data from various sources, gathered, grouped and fed into a computer. The particular software is designed to indicate at both the top and bottom of each page the security classification of that page. There exists a classification guide, within the software, that related to the printed material and affords the appropriate classification. Col Cato advised further that when the contents of the article were compared to the appropriate classification guide for the POM, none of the data was classified. Cato did offer, however, that the information was "contractor sensitive" in that it contained data that could allow a contractor the "inside track" when bidding on services. He gave the opinion that the information from the POM should never have been released. When queried as to the possible source of the data, Col. Cato advised that since so many different people were responsible for small portions of the POM and since it was not really compartmentalized, there is virtually no known method of ferreting out the culprit unless someone comes forward and admits the disclosure.

On 11 July 1988, I called three members of my staff together and assigned them interview tasks in an attempt to gather additional information about the POM, the alleged disclosure and the possibility of a security compromise. Those three security specialists are identified as:

Ms. Edith Nibecker
Ms. Ann Pasini
Ms. Donna Hatfield

FOR OFFICIAL USE ONLY

During the period 12-22 July 1988, those specialists interviewed the following US Army officers who were designated as having pertinent knowledge of the preparation of the POM:

LTC Stalzer, Thomas E., Assistant to and Executive Officer to the Deputy for Technology and Assessment.
LTC FLEMING, John J., Deputy Chief, Plans and Programs - SARDA
LTC Romano, Michael A., Systems Staff Officer
LTC Marsh, Edward H., Principal Executive Officer for Communications Systems - SARDA
MAJ Fallon, Andrew J., PEO-IEW Representative

Interviews of the aforementioned officers disclosed substantially the same information as gleaned from Col. Cato. Each of the staff officers was asked if he was aware of how the data became known to INSIDE THE PENTAGON and each answered that he did not.

On 29 July 1988, Mr. Milton H. Hamilton, Administrative Assistant to the Secretary of the Army was briefed on the status of the investigation to date. He stated that he was satisfied that the data was not classified; however, he was of the opinion that future handling of the POM should be facilitated by more stringent security and less complacency. He did not feel that my office should undertake the further investigation by interviewing members of the staff of INSIDE THE PENTAGON, and neither did he feel that we had sufficient evidentiary material to request investigation by other agencies. He requested that all Principal Directors, involved in POM preparation, be briefed on proper security procedures and recommended that no attention be afforded to the article in question as this would add to the publicity.

Based on the conference with Mr. Hamilton, all briefings were conducted and the matter was closed within the files of HQDA Security

Ronald E. Adams

RONALD E. ADAMS
DIRECTOR, HQDA
SECURITY OFFICE

ENCLOSURE

FOR OFFICIAL USE ONLY

A weekly industry report on DOD acquisition/procurement, contract management, and legislative/regulatory policies

SPECIAL REPORT — ARMY's FY-90-94 R&D BUDGET PLAN

Following is a 12-part special report detailing the Army's five-year program objective memorandum (POM) for research and development efforts. The report is based on Army POM documents obtained by Inside the Pentagon.

According to extended Army aviation forecast
ARMY TO BEGIN WORK ON FUTURE ATTACK ROTORCRAFT IN YEAR 2000

The Army plans to begin development work on the Future Attack Rotorcraft (FAR) in FY-2000, according to internal Army planning documents obtained by Inside the Pentagon. In addition, the Service is eying an FY-98 target date for the Advanced Cargo Aircraft (ACA), FY-95 for Advanced Special Electronics Mission Aircraft (ASEMA), FY-99 for UH-60 Blackhawk Improvement and AH-64 Apache Block Improvement, and FY-91 for the highly political Light Helicopter Experimental (LHX). The Army's FY-90 program objective memorandum (POM) calls for a funding level for aviation r&d of $40-million/year.

The Army's aviation POM for FY-90-94 does not support the following research and development programs: any propulsion demonstration; auxiliary thrust air-to-air (ATA) maneuverability demonstration; safe/survivable/sustainable aircraft demonstration; initiation of the CAMMS (combined arms multi-purpose missile system) in FY-90, as earlier planned; aircraft electric drive systems demonstration; other than analysis, no direct support of AH-64 block improvements; and any aircraft structures demonstrations.

The Army's FY-90 POM funds the following aviation research and development efforts (see chart for specific funding details): target acquisition sensor fusion demonstration; ATA combat/fire control demo; ATA maneuverability/agility rotor system demo; rotorcraft systems integration simulator; dual spectrum pilotage prototype; standardized advanced infrared sensor; flying simulator; day/night, all weather operations, low observables demos; training device technology transition demonstrations; aviation command and control demo; advanced transmission demo; simultaneous engagement armament system; obstacle avoidance system and combined arms multipurpose missile system beginning in FY-94 — possibly to be replaced by the follow-on to the Stinger program (Inside the Pentagon, May 13, p3).

POM 90-94 $277:

- Target Acquisition Sensor Fusion Demo ($ in FY88 through FY89, $1.1M in FY90, $2.5M in FY91 and $3.0M in FY92) ($3710/DK70)
- Air-to-Air (ATA) Combat/Fire Control Demo ($7.32M in FY90, $7.32M in FY91, $7.32M in FY92, $7.32M in FY93, and $3.878M in FY94) ($3003/D935)
- ATA Maneuverability/Agility Rotor System Demo ($4.045M in FY91, $3.962M in FY92, $4M in FY93, and $5.437M in FY94) ($3003/D936)
- Rotorcraft Systems Integration Simulator (RSIS) Combat Missiles Upgrade ($1.47M in FY91 for the AH-64 Block Improvement and $0.35M in FY93 and $2M in FY94 for the FAR simulations) ($3003/D83E)
- Dual Spectrum Pilotage Prototype ($ in FY88 through FY89, $0.9M in FY90, $ in FY91, $0.786M in FY92, $3.307M in FY93 and $2.801M in FY94) ($3710/DK86)
- Standardized Advanced Infrared Sensor (SAIRS) ($6.5M in FY87, $2.545M in FY88, $1.359M in FY89, $4.0M in FY90 and $3.7m in FY91) ($3710/DK87)
- Flying simulator for verification of fixed and rotion base simulator accuracy ($2.5M in FY92, $2.5M in FY93 and $3.5M in FY94) ($3003/D933)
- Day/Night, All Weather Operations, Low Observables Demos ($5.633M in FY90, $5.135M in FY91, $5.488M in FY92, $5.65M in FY93, and $9.308M in FY94) ($3003/D936)
- Training device technology transition demonstrations ($1M in FY90, $1M in FY91, $1M in FY92, $1M in FY93 and $0.5M in FY94) ($3003/D83G)
- Aviation Command and Control Demo ($9.55M in FY90, $4.85M in FY91, $4.85M in FY92, $4.5M in FY93 and $2M in FY94) ($3003/D897)

POM 90-94 $87?: (Continued)

- Simultaneous Engagement Armament System ($2.8M in FY90, $1.0M in FY91, $1.0M in FY92, $2.4M in FY93, and $2.6M in FY94) ($3004/D939)
- Obstacle Avoidance System ($1.0M in FY88, $2.9M in FY89, $5.0M in FY90, $3.8M in FY91 and $2.0M in FY92) ($3710/DK86)
- Combined Arms Multipurpose Missile (CAMM) ($0 in FY90 through FY93, $3.05M in FY94) ($3313/D263)
- Advanced Transmission Demo ($3.317M in FY90, $1.280M in FY91, $2.592M in FY92, $3.516M in FY93, and $2.500M in FY94) ($3003/D872)

POM 90-94 DOES NOT $97:

- Propulsion demo of any kind. ($14.695M in FY90, $19.808M in FY91, $25.948M in FY92, $95.45M in FY93, and $40M in FY94) ($3003/D897)
- Auxiliary Thrust Air-to-Air (ATA) Maneuverability Demo ($0.201M in FY90, $5.515M in FY91, $5.325M in FY92, $0.584M in FY93, and $2.55M in FY94) ($3003/D872)
- Safe/Survivable/Sustainable Aircraft Demo ($2.25M in FY92, $0.25M in FY93, and $0.245M in FY94) ($3003/D936)
- Initiate the CAMM program in FY 90. ($10M in FY90, $10M in FY91, $25M in FY92, $30M in FY93, and $6.95M in FY94) ($3313/D263)
- Aircraft Electric Drive Systems Demo ($6.4M in FY93 and $10.682M in FY94) ($3003/D897)
- Simultaneous Engagement Armament System ($2.8M in FY90, $1.0M in FY91, $1.0M in FY92, $2.4M in FY93, and $2.6M in FY94) ($3004/D939)
- Dual Spectrum Pilotage Prototype ($1.6M in FY92 and $1.0M in FY93) ($3710/DK86)

The Army plans to spend $30-million/year, from FY-90 through FY-94, to support "soldier oriented research and development [r&d]," according to the Service's current internal plan for the FY-90 five-year budget (the program objective memorandum, or POM). The funds are expected to support myriad r&d programs, including manprint and training. Earlier Army plans had envisioned a doubling of funding in the next few years, according to sources, but fiscal restraints mean that the Service likely will have to curtail spending in this and other key mission areas. As a result, several programs fall out of the POM, including: verification of manprint techniques; information exchange system within corps; requirements for computer generated visual systems for aviation simulation and computerized training development; reserve component retention; and a study of the influence of family on officer recruitment, performance and retention.

The POM-90 does fund (see related chart): manning and leading through r&d efforts aimed at computerized armed services vocational aptitude battery, increased retention and enhanced leadership skills; training through artificial intelligence base maintenance training devices and work geared toward maximizing training transfer; structuring and equipping to enhance "lessons learned," database to evaluate command, control, communications and intelligence hardware, human performance in imagery intelligence; family r&d, specifically, family influence on enlisted retention and readiness; army civilian force supervisory selection, training and performance measurement; and manprint r&d vis-a-vis analytic techniques to estimate manpower personnel and training requirements.

SOLDIER ORIENTED R&D

CURRENT PROGRAM

	DOES	DOES NOT
MANNING & LEADING:	COMPUTERIZED ASVAB INCREASED RETENTION ENHANCED LEADERSHIP SKILLS	RESERVE COMPONENT RETENTION
TRAINING:	"AI BASE" MAINTENANCE TRAINING DEVICES HOW TO MAXIMIZE TRAINING TRANSFER	REQUIREMENTS FOR COMPUTER GENERATED VISUAL SYSTEMS FOR AVIATION SIMULATION COMPUTERIZED TRAINING DEVELOPMENT
STRUCTURING & EQUIPPING:	"LESSONS LEARNED" DATABASE TO EVAL C³I HARDWARE HUMAN PERFORMANCE IN IMAGERY INTELLIGENCE	INFORMATION EXCHANGE SYSTEM WITHIN CORPS
FAMILY R&D:	FAMILY INFLUENCE ON ENLISTED RETENTION & READINESS	FAMILY INFLUENCE ON OFFICER RECRUITMENT, PERFORMANCE RETENTION
ARMY CIVILIAN FORCE:	SUPERVISORY SELECTION TRAINING, PERFORMANCE MEASUREMENT	
MANPRINT R&D:	ANALYTIC TECHNIQUES TO ESTIMATE MANPOWER PERSONNEL & TRAINING REQUIREMENTS	VERIFICATION OF MANPRINT TECHNIQUES

ARMY DOUBLES FUNDS FOR ARMOR/ANTI-ARMOR R&D TO OVER $100-MILLION IN FY-90

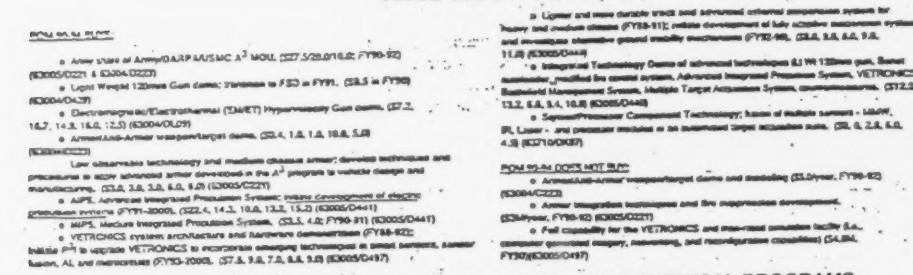
The Army, in its classified internal budget for FY-90-94, is planning to double spending for "close combat heavy" (CCH) -- a move that significantly underscores Army interest in beefing up armor/anti-armor initiatives. Specifically, the Army is planning to increase CCH research and development (r&d) funds from a $60-million level in FY-89 to over $100-million in FY-90, according to documents obtained by Inside the Pentagon. The emphasis of the armor/anti-armor effort in the FY-90-94 budget period (the program objective memorandum, or POM) will be M-1, M-2 and the Armored Family of Vehicles (AFV), according to the documents. However, the POM stops short of supporting the following programs: anti-armor weapon, target demonstration and modeling; armor integration and fire suppression; and full capability of the vetronics simulation facility.

The Army's FY-90 POM supports the following armor/anti-armor r&d development programs (for

BEST AVAILABLE COPY

details of funding levels see related chart): Army share of Army/Defense Advanced Research Projects Agency/US Marine Corps Armor-Anti-Armor program; light weight 120mm gun demonstration; electromagnetic/electrothermal hypervelocity gun demonstration; anti-armor weapon/target demonstration; signature reduction and medium chassis armor; advanced integrated propulsion system; medium integrated propulsion system; vetronics system architecture and hardware demonstration; lighter and more durable track and advanced external suspension systems for heavy and medium chassis; integrated technology demonstrator; sensor/processor component technology in an automated target acquisition suite.

CLOSE COMBAT HEAVY (CCH)



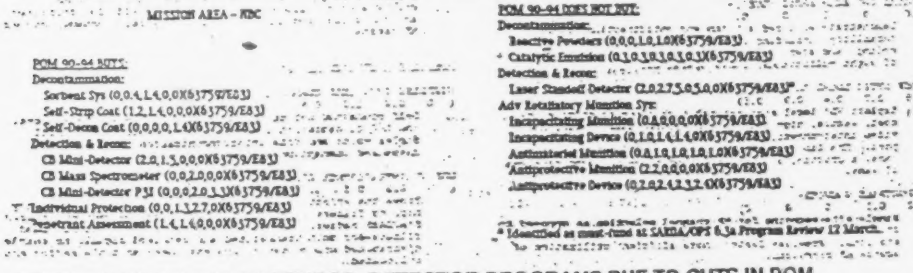
ARMY POM CUTS FUNDING FOR NUCLEAR, BIOLOGICAL AND CHEMICAL PROGRAMS

The Army has decided to scrap plans to increase spending for nuclear, biological and chemical programs (NBC), according to documents obtained by Inside the Pentagon. As a result of the "low" funding levels, the following programs will be slowed: decontamination, specifically, reactive powders and catalytic emulsion; detection and reconnaissance, specifically, the laser standoff detector which was "identified as must-fund during an Army program review last March," according to the document; advanced retaliatory munition systems, including incapacitating munition, incapacitating device, antimateriel munition, antiprotective munition and antiprotective device.

The Service earlier had planned to increase spending on NBC-related efforts in the FY-90-94 budget period (the program objective memorandum, or POM) but because of defense budget constraints has opted to fund NBC programs at a steady level of $4.7-million/year, according to the documents.

Army officials anticipate beginning M-1 block III work in FY-90, as well as M-2 and M-3 product improvement programs which will provide the platform for the NBC programs. In addition, Pentagon officials plan to begin work on the Armored Family of Vehicles platform for NBC efforts between FY-95 and FY-2000.

The Army's FY-90 POM funds the following efforts (for specific dollar values see related chart): decontamination programs, including sorbent systems, self-strip coat and self-decontamination coat; detection and reconnaissance efforts including CB mini-detector, CB mass spectrometer and CB mini-detector pre-planned product improvement; individual protection; and penetrant assessment.



ARMY DELAYS WORK ON SENSOR, DETECTOR PROGRAMS DUE TO CUTS IN POM

The Army's FY-90 five-year budget plan for engineer/mine warfare does not include over $70-million required for five major programs aimed at enhancing detectors and sensors, according to Army defense

BEST AVAILABLE COPY

documents obtained by [illegible]

Specifically, the Army's FY-90-94 budget (the program objective memorandum, or POM) delays "by at least two years development of new sensors, communications systems and extended range mines to improve or replace the family of scatterable mines." In addition, the POM: delays the hand-held detector by two years; slows technology demonstrations related to logistics-over-the-shore, materials handling equipment, fixed facility camouflage, barriers, defensive fighting positions, hardened structures, expedient repair of runways, roadways and port facilities; does not fund vehicle integrated power system, advanced materiel designs for generators, intelligent load distribution system or low loss/low weight cables; and delays work on the footbridge/light vehicle bridge. (See related chart for funding details.)

The POM funds the following engineer/mine warfare programs: standoff mine detection system demonstration; improved dispersed explosives to clear hardened mines; individual hand-held mine detector; heavy dry support bridge; river crossing deception system, audio simulator system, tactical inflatable deception equipment; and demonstrations of the anti-helicopter mine, command controllable mine and advanced mine warheads.

[illegible]

ARMY FY-90 POM STALLS WORK ON 12 COMMUNICATION TECHNOLOGY DEMONSTRATIONS

Twelve Army communication programs will be stalled or stopped as a result of the low level of funds in the Army's FY-90-94 budget (the program objective memorandum, or POM) despite an increase in funding for communication research and development (r&d) from no money in FY-89 to nearly $10-million in FY-94.

Specifically, the communications r&d programs which will be negatively impacted because of the POM include: wireless intracell communication system; cosite interference reduction; adaptive data applique; speech processing and noise cancellation; high frequency channel estimator; multiservice system; multimode digital radio; low power radio; high frequency packet; miniature high frequency modem; high frequency high "hop" data rate system; and real time "hop" set management. (See related chart for funding details.)

The FY-90-94 POM for Army communications funds the following efforts: digital ultra-high-frequency electronic counter CM applique radio (DUER); fiber optic local area network; man-portable sounder; and high-frequency solid state power amplifier/coupler.

[illegible]

BEST AVAILABLE COPY

95-941 O - 89 - 16

ARMY GIVES SCANT FUNDING TO FIRE SUPPORT IN FY-90 FIVE-YEAR-BUDGET

Army budget plans for the FY-90-94 period calls for zero funding for "fire support" programs, according to documents obtained by Inside the Pentagon. Despite this, the Army has decided to fund nominally some fire support-related efforts, according to the Service's five-year FY-90 budget (the program objective memorandum, or POM), including liquid propellant for 155, unicharge, advanced field artillery system and dual mode seeker. However, as a result of the near-zero funding level, the following programs will be stalled: multi-option fuze; common modular fire control; next generation sense and destroy armor (SADARM); and light weight fire support. (See related chart for detailed rundown of POM funding levels.)

Other fire support technology evaluation efforts that the Army had previously considered funding include: propulsion physics; liquid propellant ignition and combustion; reaction kinetics; monolithic charge; interior ballistics models; programmed splitting stick; and millimeter wave research.

[illegible] AREA - FIRE SUPPORT

FOR 90-94 Buys:

Unicharge (0.2,0.0,0.0,0 63804/L09)

Liquid Propellant (2.3,3.0,0.0,0 63804/1233; decrease logistics burden, provide controlled amount of propellant, decrease vulnerability

AFAS (3.0,3.0,3.4,-0.0,17.3 63804/L09; provides enhanced deployability, mobility, and agility; ability to overmatch the enemy with more lethal conditions; simplified logistics support through improved sustainability and improved propulsion system

Dual Mode Seeker (0,1.2, 3.4, 3.1, 4.3 63313/9801; provides seeker for MLRS or AFAS

FOR 90-94 Does Not Buy:

Multi-Option Fuze (0,4.0,3.3,0,0 . 63804/DA09; provides hardened and enhanced capabilities that will perform all fuze functions needed for harsh conditions

Common Modular Fire Control (3.0,3.0,7.0,0,0 63804/DA09)

Next Generation SADARM (6.0, 6.0, 7.0, 0, 0 63804/2221

Light Weight 155 (1.9, 25.0, 25.0, 0, 0 63102/D071) provides air transportable 155mm howitzer to light forces

ARMY CUTS AIR DEFENSE SPENDING IN FY-90-94 BUDGET PLAN; STRESSES NEW RADAR WORK

The Army has scrapped earlier plans to nearly double its FY-89 air defense budget of $15-million to $28-million in FY-90. Because of budget constraints, Army officials plan to increase air defense spending to $20-million-plus in FY-90, and then decrease funds to a $10-million level in FY-94. These figures are based on Army documents describing the Service's plans for the FY-90-94 internal budget (the program objective memorandum, or POM). The lion's share of air defense research and development funds, according to the document, will be spent on a "multi-role survivable radar" (MRSR). In addition to the MRSR, the plan emphasizes Forward Area Air Defense (FAAD) and the new Medium Surface-to-Air Missile (MSAM) program.

However, MRSR and several other key air defense initiatives are not fully funded in the POM, and as a result progress on these programs will be slowed, say Army officials. Other air defense programs which will be slowed as a result of reduced funds include: missile hardware-in-the-loop simulation, advanced manufacturing research and minimum signature propellant development.

The Army plans to begin full-scale development work on the FAAD command, control and intelligence (C2I) block II in FY-91; FAAD line-of-sight forward-heavy (LOS-F-H) block II in FY-92; FAAD pedestal-mounted Stinger (PMS) pre-planned product improvement (P3I) in FY-92; FAAD non-line-of-sight anti-tank in FY-94; and MSAM in FY-93.

Other air defense initiatives funded in the POM (see chart) include: the advanced air defense electro-optic (EO) system; and missile and rocket manufacturing technology.

AIR DEFENSE

POM 90-94 BUYS:

- Advanced Air Defense C-E System (AADCES) ($1.925M in FY89, $4.749M in FY90, $3.158M in FY91 and $0.5M in FY92) (63710/D670)
- Multirole Survivable Radar (MRSR) ($8.5M in FY90, $6.85M in FY91, $9.29M in FY92, and $6M in FY93) (63313/9271)
- Missile Signature Propellant Development ($1.5M in FY90, $2M in FY91, $2.5M in FY92, $2.5M in FY93, and $2.5M in FY94) (63313/9401)
- Missile Hardware-in-the-Loop Simulation ($3.5M in FY90, $3.5M in FY91, $4.5M in FY92, $4.5M in FY93, and $4.6M in FY94) (63313/9206)
- Missile and Rocket Manufacturing Technology ($2.5M in FY90, $2.6M in FY91, $2.7M in FY92, $2.8M in FY93, and $2.9M in FY94) (63313/9047)

POM 90-94 DOES NOT BUY:

- Missile Hardware-in-the-Loop Simulation ($0.5M in FY90, $0.5M in FY91, $0.5M in FY92, $0.5M in FY93, and $0.6M in FY94) (63313/9206)
- Multirole Survivable Radar (MRSR) ($4.9M in FY90, $0.06M in FY91 $0.09M in FY92, and $0.0M in FY93) (63313/9271)
- Advanced Manufacturing Research ($1.5M in FY90, $1.6M in FY91, $1.5M in FY92, $1.2M in FY93, and $1.1M in FY94) (63313/9047)
- Missile Signature Propellant Development ($1.5M in FY90, $1.6M in FY91, $0.5M in FY92, $0.5M in FY93, and $0.5M in FY94) (63313/9401)

BEST AVAILABLE COPY

... SPENDING ON INTELLIGENCE, ELECTRONIC WARFARE TO $30-MILLION/

The Army, in its internal FY-90-94 budget, is spending $30-million/year on research and development demonstration programs for intelligence and electronic warfare (IEW), according to Army budget documents obtained by Inside the Pentagon. DOD had planned to hike funds for IEW to as much as $60-million in FY-91, however defense budget constraints and higher priorities have precluded the Army from following through with the plan.

Specifically, the FY-90-94 budget (the program objective memorandum, or POM) buys the following (see related chart for funding details): communications jammer "2000," including the artificial intelligence integration jammer and forward area jammer; advanced electro-optic countermeasures system, comprising the airborne countermeasures transmitter (ACT) direct energy technology (DET) "TRK" technology and forward looking infrared (FLIR) detection and jamming and effects simulation; advanced infrared countermeasures system, including "IMPRV" sources high frequency, jam wave capability and electronic "MOD" technology; "ALBE" tactical "DEC" aids; autonomous unmanned vehicle sensor; unmanned aerial vehicle lock and track; unmanned aerial vehicle moving target indicator radar; and grenade shadow.

The Army's FY-90-94 POM for IEW r&d stops short of supporting the following programs: non-communications jammer 2000, including wide band millimeter/microwave, advanced "MOD" and "PWR" management and "SP/WT/PR" reduction; enhanced communications jammer 2000, comprising advanced jamming control and "MOD" jamming architecture; electronic warfare support measures (ESM)/electronic intelligence tactical systems including "INCR" "SENS" and "LOC" "ACCUR" and "INCR" data thruput; "ALBE" enhanced tactical "DEC" aids; "HELLOCS" demonstrations; unmanned aerial vehicle/synthetic aperture radar x-band radar; unmanned aerial vehicle/synthetic aperture radar y-band radar; airborne ultra-light radar; and bistatic radar.

INTELLIGENCE/ELECTRONIC WARFARE

PROJECTED SYSTEMS APPLICATIONS

1990-1994	1995-2000	2000-2005
TACJAM-A	QUICKFIX III	COMM JAMMER 2000
STINGRAY	AERIAL COMM JAM	NON-COMM JAM 2000
CAMEO BLUEJAY	GUARDRAIL PIP	INTRCPT/COLL 2000
DTSS,MC3 & ASAS PIP	TEAMPACK PIP	
	TEST WEATHER SYS	
	FAMILY OF UAV's	

POM 90-94 BUYS:	POM 90-94 DOES NOT BUY:
COMM JAMM 2000	NON-COMM JAMM 2000
AI INTEG JAMMER	WIDE BAND MM/MICROWAVE
FWD AREA JAMMER	ADV MOD & PWR MGMT
ADV EOCM SYST	SP/WT/PR REDUCTION
ALT DET TRK TECH	ENHANCED COMM JAMM 2000
FLIR DET/JAM	ADV JAMM CONTROL
EFFECTS SIM	MOD JAMM ARCH
ADV IRCM SYS	ADV ESM/ELINT TACT SYS
IMPRV SOURCES HF	INCR SENS & LOC ACCUR
JAM WAVE CAPABILITY	INCR DATA THRUPUT
ELECT MOD TECH	ALBE ENH TACT DEC AIDS
ALBE TACT DEC AIDS	HELLOCS DEMO'S
AUTO UNMAN VEH SENSOR	UAV BASED JAMMER
UAV LOCK & TRACK	UAV/SAR X-BAND RADAR
UAV MTI RADAR	UAV/SAR Y-BAND RADAR
GRENADE SHADOW	ABN ULTRA LT RADAR
	BISTATIC RADAR

ARMY FIVE-YEAR BUDGET PLAN CUTS FUNDS FOR TEN COMBAT SERVICE SUPPORT PROGRAMS

The Army, in its internal five-year budget for FY-90-94, is falling far short of original plans to increase spending on combat service support (CSS) research and development from current levels of $10-million/year to nearly $35-million/year. Instead, according to documents obtained by Inside the Pentagon detailing the Service's plans for its FY-90-94 budget (the program objective memorandum, or POM), the Army will maintain a CSS r&d budget throughout the POM period of about $10-million/year. As a result of the budget cut, ten CSS programs will be stretched out.

The programs which will be slowed as a result of POM CSS budget reductions include: low altitude retrorocket airdrop system; soldier survivability tech demos; monolithic 6-port modules; technology

BEST AVAILABLE COPY

demonstration of a combustion quality monitor and fuel elastomer test methodology; 3d classified short title of collapsible fuel tanks; proof of principle demonstration of a chassis mounted rearm/resupply module for the light weight 120mm armament system; demonstration of containerization and tactical resupply vehicle integration; test program set development for pedestal-mounted Hawk; Army integrated diagnostics maintenance environment; and automated test equipment translator development.

The FY-90-94 POM funds the following CSS programs (see related chart): 500 feet/250 knot personnel airdrop system; three soldier survivability technology demonstrations; demonstration of the portable lube quality monitor; demonstration of rearm systems for current and future howitzers; development of weapon system diagnostic/prognostic and automatic test equipment technology; common-abbreviated test language all systems; infrared automatic mass screening and mechanical infrared inspection and diagnostic systems; and test metrics software tools.

COMBAT SERVICE SUPPORT (CSS)

FY90-94 POM'S

- o 500 ft/250 knot Personnel Airdrop System; $1.7/year FY90-92. 500 ft/250 knot Personnel Airdrop System; $1.3/2.0, FY93-94. ($3001.8242)
- o Three soldier survivability tech demos: Individual Soldier Thermophysiological Conditioning Vest to reduce heat stress woes in protective clothing, reduce soldier/crew weight, and improve survability; Integrated Protective Clothing to add ballistic protection to uniform; and Integrated Protective Helmet to improve ballistic/impact/small arms protection; $0.9/1.0/1.4/1.4/2.0, FY90-94. ($3001.2XXA)
- o Demonstration of the portable lube quality monitor; evaluation of a field fuel pretreatment unit to separate off-spec fuels and make them usable; user testing of the steels fuel on the battlefield; a first generation accelerated fuel qualification processure; field simulated fuels testing (performance vs quality tradeoff); development of fuels and lubes for AIPS; demonstration of improved military SAE grease; $2.1/2.1/2.2/2.3/2.5, FY90-94. ($3001.8120)
- o Demos of rearm systems for current/future howitzers; explosive ordnance disposal demonstration; ammo packaging and containerization; $1.8/1.9/1.9/2.0/2.2, FY90-94. ($3001.2543)
- o Development of weapon system diagnostic/prognostic and automatic test equipment technology; $1.3/year, FY90-94. ($3001.3229)
- o Common-Abbreviated /Test Language All Systems (C-ATLAS) for electro-optics, spread spectrum, millimeter wave, and VHSIC devices; $1.6 total, FY90-94. ($3001.3229)
- o Infrared Automatic Mass Screening (IRAMS) and Mechanical Infrared Inspection and Diagnostic Systems (MIRIDS) to detect failed printed circuit boards/mod inside faulty components, respectively, through infrared beams; ($0.6 total, FY90-94. ($3001.8229)
- o Test metrics software tools; Test Program Set (TPS) database/data network connection and maintenance; IPS Life Cycle Cost model testing and integration; Computer Aided Design (CAD) development and integration; $1.3/year, FY05-94. ($3001.2244)

FY90-94 POM'S NOT SET:

- o Low Altitude Reconnaissance Airdrop System (LARS) ($.4 funded in FY92) tech demos; $2.5/year, FY90-94. ($3001.8242)
- o Soldier survivability tech demos: Body Armor, Protective Footwear, Protective Weapons, Fire resistant clothing; $2.4/2.5/2.9/3.1/3.1, FY90-94. ($3001.2XXA)
- o Demolition 6-port modules to test functioning of MMIC chips; error analysis on automatic network analyzers; National Laser Bore Profile Standard for DoD (at NBS); $1.0/1.0/1.3/1.4/1.2, FY90-94. ($3001.8596)
- o Tech demo of a composition quality monitor; fuel elastomer test methodology to extend shelf life of collapsible fuel tanks; $1.1/1.2/1.4/1.5/1.5, FY90-94. ($3001.2150)
- o Proof of Principle demonstration of a chassis mounted rearm/resupply module for the LT WT 120mm Armament System; $4.5 total, FY90-94. ($3001.0543)
- o Hardware and software improvements to the Class V Logistics System to meet Conventional mandate for improved ammo accountability; $2.4 total, FY90-94. ($3001.0543)
- o Demonstration of containerization and tactical Assembly Testable Integration (Conventional interest); $1.4 total, FY90-94. ($3001.0543)
- o Test Program Set (TPS) development for FM Band, AMC Test Program Set Centers and depots, etc.; $2.3 total, FY90-94. ($3001.8229)
- o Army Integrated Diagnostics Maintenance Environment (AIDME) with a computer-aided engineering workstation to "design-in" built-in tests to support two level maintenance and to capture design and test data; $9.1 total, FY90-94. ($3001.2229)
- o Automated Test Equipment (ATE) Translator development; Analog Automatic Test Program Generator (AIPG) for ATLAS; ATLAS reusable code library; Test Trade Off analysis and implementation; $1.3/year, FY90-94. ($3001.3244)

ARMY DOUBLES FUNDS FOR CLOSE COMBAT 'LIGHT' MISSIONS IN POM TO AID M2, M3, AFV

Army officials are planning to rejuvenate funds for the "close combat light" (CCL) mission area in the FY-90-94 budget period, with efforts expected to focus on small arms weapons demonstrations, insensitive munitions -- the XM919 -- and a next-generation armament known as "com vat." The efforts will have primary application on the M2 and M3 tanks and the Armored Family of Vehicles (AFV) and are based on recommendations contained in the recently drafted "Small Arms Master Plan." (For specific funding levels see related chart.)

Over the FY-90-94 budget period (the program objective memorandum, or POM) funding for research and development efforts for CCL will be increased from approximately $8-million in FY-89 to $17-million in FY-94, according to Army budget documents obtained by Inside the Pentagon. However, according to the documents, the POM-90-94 does not fund the cannon caliber caseless ammunition.

The Army plans to conduct exploratory research in the following CCL areas: insensitive propellants and explosives; linkless feed systems; telescoped ammunition; advanced small arms penetrators; modular fire control; high impact fragmentation; and "EM/ET" propulsion for small arms. CCL development efforts will be aimed at advanced small arms and production of a light combat vehicle armament.

MISSION AREA - CLOSE COMBAT LIGHT

POM 90-94 $XXX:

Small Arms Weapon Demos (per SAMP) (7.7,7.9,8.0,8.2,8.1)(63607/D627)
Insensitive Munitions XM919 (0.3,0.3,0.2,5.0)(63004/439)
ComVat (0,0,0,4.7,7.9)(63004/439)

*POM 90-94 DOES NOT SAY:

Caseless Caliber/Cassless Ammo (0,2.9,2.7,2.8,0)(63004/439)

BEST AVAILABLE COPY

ARMY TAILORS FY-90 FIVE-YEAR COMMAND/CONTROL BUDGET FOR NEW ATCCS PROGRAM

DOD is tailoring its five-year FY-90-94 budget (the program objective memorandum, or POM) for Army command and control toward the Army Tactical Command and Control System (ATCCS) and will spend over $40-million in the FY-90-94 period on technology demonstration efforts aimed at application on ATCCS, according to Army budget documents obtained by Inside the Pentagon.

Specifically, the Army's POM supports the following command and control r&d initiatives (see related chart for funding levels): battlefield management system; force level control surface warfare; Army secure operating system; airland battle management; and battlefield coordination element.

The Army's FY-90 command and control plan does not fund the expanded airland battle management initiative, according to the budget documents.

MISSION AREA: COMMAND & CONTROL
($ in MILLIONS)

FY 90-94 POM ADDS:

BATTLEFIELD MANAGEMENT SYSTEM (BMS)-
(2.8 3.1 3.5 3.5 2.8)
Lower echelon command & control system. Will integrate and coordinate all arms elements at battalion and below. Will interface to upper echelons via ATCCS, primarily this MCS.

FORCE LEVEL CONTROL SOFTWARE (FLCS)-
(2.1 3.0 4.6 4.7 4.5)
Common suite of software tools for integrating functions across the nodes of the Sigma Star, for interfacing with echelons above Corps and NATO allies, and will serve as the ATCCS gateway to lower echelon C2 systems such as BMS.

ARMY SECURE OPERATING SYSTEM (ASOS)-
(2.5 0 0 0 0)
Multilevel security and protection of classified information for operating systems in tactical C2 computer systems.

AIRLAND BATTLE MANAGEMENT (ALBM)-
(2.0 0 0 0 0)
Artificial Intelligence/Expert System based automation of planning and orders generation for maneuver at Corps, Maneuver at Division, and Fire Support at Corps.

BATTLEFIELD COORDINATION ELEMENT (BCE)-
(1.0 2.5 0 0 0)
Provides coordination between land component commanders and air support. Addresses airspace requirements, air tasking orders, and air coordination orders.

POM 90-94 DOES NOT ADD:

ENHANCED AIRLAND BATTLE MANAGEMENT-
(1.0 3.0 4.0 4.0 3.0)
Expand the ALBM expert system methodology to automate planning and decision making across the FEW, AD, and CS nodes of Sigma Star.

POM 90-94 PROGRAM I YEAR

ADAPTIVE DATA AFFLIQUE-
(0 0.5 0.5 0.5 0)
Automatic/adaptive selection of coding and data rates for use in radios such as SINCGARS to increase throughput and reduce error rates when communicating in poor conditions. Will provide for performance optimization of existing single channel systems.

SPEECH PROCESSING AND NOISE CANCELLATION-
(0 0.5 0.8 0 0)
Demonstrate increased voice intelligibility in the high noise environment of tracked vehicles using advanced acoustic modelling and speech processing techniques.

HF CHANNEL ESTIMATOR-
(0 1.0 0.5 0 0)
Demonstrate improved capability to predict HF channel propagation conditions, for optimized channel selection and more efficient use of the HF spectrum.

MULTISERVICE SYSTEM-
(0 0.8 0.4 0 0)
Automation tools for the Signal Corps Commander for network management, frequency management, and communications security management for integrated system control for Army communications systems such as MSE, EPLRS, JTIDS, Combat Net Radio, and TACSAT.

POM 90-94 PROGRAM I YEARS:

MULTIMODE DIGITAL RADIO-
(0 0 1.0 1.0 1.0)
Demonstrate solid state, digital transceivers capable of operating across HF, UHF, or VHF spectrums with all attendant modulation modes and antijam techniques. Will eliminate strict differentiation between HF, UHF, and VHF to provide optimally adaptive communications most appropriate for a particular mission requirement.

POM 90-94 PROGRAM I YEARS:

LOW POWER RADIO-
(0 0 0 2.0 3.0)
Demonstrate significant size, weight, and power reduction in hand held radios including antijam and low probability of intercept features. Payoff is reduced soldier's load and simplified logistics with reduced battery consumption.

POM 90-94 PROGRAM 4 YEARS:

HF PACKET-
(0 0 0 0 0.8)
Demonstrate the ability of software modifications to the HF modem to support HF packet networks. Will provide for much improved utilization of the HF spectrum by transmitting and receiving in packets rather than continuously.

MINIATURE HF MODEM-
(0 0 0 0 1.0)
Demonstrate 2400 bits per second data transmission while frequency hopping in a manportable package. This will permit secure digital speech with antijam capability, and reduce time on air.

HF HIGH HOP DATA RATE SYSTEM-
(0 0 0 0 1.0)
Demonstrate the communications technology to provide 2400 bits per second data rates, frequency hopping at 2400 hops per second, and reduced interference to provide enhanced antijam performance in groundwave transmissions.

POM 90-94 DOES NOT ADD:

REAL TIME HOP SET MANAGEMENT-
(0 0 0 0.5 1.0)
Improve overall performance of frequency hopping communications systems and spectrum usage by adaptively changing hopset frequencies which are degraded by jamming or other reasons.

COMBAT SERVICE SUPPORT (CSS)

POM 90-94 BUYS:

o 500 ft/250 knot Personnel Airdrop System; $1.7/year FY90-92. 300 ft/250 knot Personnel Airdrop System; $1.8/2.0, FY93-94. (63001.D242)

o Three soldier survivability tech demos: Individual Soldier Microclimate Conditioning Vest to reduce heat stress when in protective clothing, reduce equipment weight, and improve durability; Integrated Protective Clothing to add ballistic portection to uniforms; and Integrated Protective Helmet to improve ballistic/impact/spall protection; $0.9/1.0/1.4/1.6/2.0, FY90-94. (63001.DXXA)

o Demonstration of the portable lube quality monitor; evaluation of a field fuel pretreatment unit to separate off-spec fuels and make them usable; user testing of the single fuel on the battlefield; a first generation accelerated fuel qualification procedure; field expedient fuels testing (performance vs quality tradeoff); development of fuels and lubes for AIPS; demonstration of improved military GAA grease; $2.1/2.1/2.2/2.3/2.5, FY90-94. (63001.D150)

o Demos of rearm systems for current/future howitzers; explosive ordinance disposal demonstration; ammo packaging and containerization; $1.9/1.9/1.9/2.0/2.2, FY90-94. (63001.D543)

o Development of weapon system diagnostic/prognostic and automatic test equipment technology; $1.8/year, FY90-94. (63001.DJ28)

o Common-Abbreviated /Test Language All Systems (C-ATLAS) for electro-optics, spread spectrum, millimeter wave, and VHSIC devices; $1.6 total, FY90-94. (63001.DJ28)

o Infrared Automatic Mass Screening (IRAMS) and Mechanical Infrared Inspection and Diagnostic Systems (MIRIDS) to detect failed printed circuit boards and isolate faulty components, respectively, through infrared means; ($0.6 total, FY90-94. (63001.DJ28)

o Test metrics software tools; Test Program Set (TPS) database/data network expansion and maintenance; TPS Life Cycle Cost Model testing and integration; Computer Aided Design (CAD) development and integration; $1.0/year, FY09-94. (63001.D244)

POM 90-94 DOES NOT BUY:

o Low Altitude Retrorocket Airdrop System (LARS) (6.4 funded in FY92) tech demos; $2.5/year, FY90-94. (63001.D242)

o Soldier survivability tech demos: Body Armor, Protective Footwear, Protective Headware, fire resistant clothing; $2.4/2.6/2.9/3.1/3.1, FY90-94. (63001.DXXA)

o Monolithic 6-port modules to test functioning of MMIC chips; error analysis on automatic network analysers; National Laser Beam Profile Standard for DoD (at NBS); $1.0/1.0/1.3/1.4/1.5, FY90-94. (63001.D594)

o Tech demo of a combustion quality monitor; fuel elastomer test methodology to extend shelf life of collapsable fuel tanks; $1.1/1.2/1.4/1.3/1.5, FY90-94. (63001.D150)

o Proof of Principle demonstration of a chassis mounted rearm/resupply module for the Lt Wt 120mm Armament System; $4.5 total, FY90-94. (63001.D543)

o Hardware and software improvements to the Class V Logistics System to meet

Congressional mandate for improved ammo accountability; $2.4 total, FY90-94. (63001.D543)

o Demonstration of containerization and Tactical Resupply Vehicle integration (Congressional interest); $1.4 total, FY90-94. (63001.D543)

o Test Program Set (TPS) development for PM Hawk, AMC Test Program Set Centers and depots, etc.; $2.3 total, FY90-94. (63001.DJ28)

o Army Integrated Diagnostics Maintenance Environment (AIDME) with a computer-aided engineering workstation to "design-in" built-in tests to support two level maintenance and to capture design and test data; $9.1 total, FY90-94. (63001.DJ28)

o Automated Test Equipment (ATE) Translator development; Analog Automatic Test Program Generator (ATPG) for ATLAS; ATLAS reusable code library; Test Trade Off analysis and implementation; $1.3/year, FY90-94. (63001.D244) .

ENGINEER/MINE WARFARE

POM 90-94 BUYS:

o Standoff mine detection system demonstration; $5.0/7.3/4.9/1.6/1.6, FY 90-94. (63606.D608)
o Improved dispersed explosives to clear hardened mines; $1.3/1.0/2.9/2.8/0, FY 90-94. (63606.D608)
o Individual hand-held mine detector; $0.8/0.3/4.2/5.4/7.7, FY 90-94. (63606.D608)
o Improved (P3I) Minefield Reconnaissance and Detection System (MIRADOR); $3.5/3.2/3.4, FY92-94. (63606.D608)
o Heavy dry support bridge; $1.9/1.9, FY 90-91. (63102.DJ01)
o River Crossing Deception System; Audio Simulator System (ASIMS); tactical inflatable deception equipment; $0.9/1.1/3.0/3.1/3.1, FY90-94. (63102.DJ01)
o Demonstrations of the anti-helicopter mine, command controllable mine, and advanced mine warheads; $3.0/year, FY 90-94. (63606.D006)

POM 90-94 DOES NOT BUY:

o Delays improved hand-held detector two years; delays completion of disperse explosives demo by three years; $29.8 total, FY90-94. (63606.D608)
o All tech demos related to Logistics-Over-the-Shore, materials handling equipment (MHE), fixed facility camouflage, barriers, defensive fighting positions, hardened structures, expedient repair of runways, roadways, and port facilities; $8.2/3.5/3.5/4.2/2.1, FY90-94. (63102.DJ01)
o Vehicle integrated power system; advanced materiel designs for generators; intelligent load distribution system; low loss/low weight cables; $0.4/1.3/0.9/0.6/0.4, FY90-94. (63102.DJ01)
o Footbridge/light vehicle bridge; $1.3, FY90. (63102.DJ01)
o Delays at least two years development of new sensors, communications systems, and extended range mines to improve or replace the Family of Scatterable Mines (FASCAM); $4.8/5.1/3.9/4.2/0.5, FY90-94. (63606.D006)

Inside the Pentagon

A weekly industry report on DOD acquisition/procurement, contract management, and legislative/regulatory policies

SPECIAL REPORT — ARMY's FY-90-94 R&D BUDGET PLAN

Following is a 12-part special report detailing the Army's five-year program objective memorandum (POM) for research and development efforts. The report is based on Army POM documents obtained by Inside the Pentagon.

According to extended Army aviation forecast
ARMY TO BEGIN WORK ON FUTURE ATTACK ROTORCRAFT IN YEAR 2000

The Army plans to begin development work on the Future Attack Rotorcraft (FAR) in FY-2000, according to internal Army planning documents obtained by Inside the Pentagon. In addition, the Service is eying an FY-98 target date for the Advanced Cargo Aircraft (ACA), FY-95 for Advanced Special Electronics Mission Aircraft (ASEMA), FY-99 for UH-60 Blackhawk Improvement and AH-64 Apache Block Improvement, and FY-91 for the highly political Light Helicopter Experimental (LHX). The Army's FY-90 program objective memorandum (POM) calls for a funding level for aviation r&d of $40-million/year.

The Army's aviation POM for FY-90-94 does not support the following research and development programs: any propulsion demonstration; auxiliary thrust air-to-air (ATA) maneuverability demonstration; safe/survivable/sustainable aircraft demonstration; initiation of the CAMMS (combined arms multi-purpose missile system) in FY-90, as earlier planned; aircraft electric drive systems demonstration; other than analysis, no direct support of AH-64 block improvements; and any aircraft structures demonstrations.

The Army's FY-90 POM funds the following aviation research and development efforts (see chart for specific funding details): target acquisition sensor fusion demonstration; ATA combat/fire control demo; ATA maneuverability/agility rotor system demo; rotorcraft systems integration simulator; dual spectrum pilotage prototype; standardized advanced infrared sensor; flying simulator; day/night, all weather operations, low observables demos; training device technology transition demonstrations; aviation command and control demo; advanced transmission demo; simultaneous engagement armament system; obstacle avoidance system and combined arms multipurpose missile system beginning in FY-94 -- possibly to be replaced by the follow-on to the Stinger program (Inside the Pentagon, May 13, p3).

POM 90-94 BUYS:

- Target Acquisition Sensor Fusion Demo (0 in FY88 through FY89, $2.1M in FY90, $2.5M in FY91 and $3.0M in FY92) (63710/DE70)
- Air-to-Air (ATA) Combat/Fire Control Demo ($7.32M in FY90, $7.32M in FY91, $7.32M in FY92, $7.32M in FY93, and $3.878M in FY94) (63003/D435)
- ATA Maneuverability/Agility Rotor System Demo ($4.045M in FY91, $3.962M in FY92, $4M in FY93, and $5.437M in FY94) (63003/D436)
- Rotorcraft Systems Integration Simulator (RSIS) Combat Mission Upg. 'da. ($1.87M in FY91 for the AH-64 Block Improvement and $0.35M in FY93 and $2M in FY94 for the FAR simulations) (63003/D834)
- Dual Spectrum Pilotage Prototype (0 in FY88 through FY89, $0.9M in FY90, 0 in FY91, $0.786M in FY92, $3.307M in FY93 and $2.801M in FY94) (63710/DE86)
- Standardized Advanced Infrared Sensor (SAIRS) ($6.5M in FY87, $2.945M in FY88 $1.159M in FY89, $4.0M in FY90 and $3.7m in FY91) (63710/DE87)
- Flying simulator for verification of fixed and motion base simulator accuracy ($2.5M in FY92, $2.5M in FY93 and $3.5M in FY94) (63003/D313)
- Day/Night, All Weather Operations, Low Observables Demos ($5.638M in FY90, $5.135M in FY91, $5.488M in FY92, $5.65M in FY93, and $9.308M in FY94) (63003/D436)
- Training device technology transition demonstrations ($1M in FY90, $1M in FY91, $1M in FY92, $1M in FY93 and $0.5M in FY94) (63003/D839)
- Aviation Command and Control Demo ($4.55M in FY90, $4.85M in FY91, $4.85M in FY92, $4.5M in FY93 and $2M in FY94) (63003/D897)

POM 90-94 BUYS: (Continued)

- Simultaneous Engagement Armament System ($2.8M in FY90, $1.0M in FY91, $1.0M in FY92, $2.4M in FY93, and $2.6M in FY94) (63004/D439)
- Obstacle Avoidance System ($1.0M in FY88, $2.9M in FY89, $5.0M in FY90, $3.8M in FY91 and $2.0M in FY92) (63710/DE86)
- Combined Arms Multipurpose Missile (CAMM) ($0 in FY90 through FY93, $3.05M in FY94) (63313/D263)
- Advanced Transmission Demo ($3.317M in FY90, $1.280M in FY91, $2.892M in FY92, $3.516M in FY93, and $2.500M in FY94) (63003/D872)

POM 90-94 DOES NOT BUY:

- Propulsion demo of any kind. ($14.605M in FY90, $19.808M in FY91, $25.448M in FY92, $25.45M in FY93, and $40M in FY94) (63003/D447)
- Auxiliary Thrust Air-to-Air (ATA) Maneuverability Demo ($4.201M in FY90, $5.515M in FY91, $5.325M in FY92, $4.584M in FY93, and $2.55M in FY94) (63003/D872)
- Safe/Survivable/Sustainable Aircraft Demo ($2.35M in FY92, $4.35M in FY93, and $0.745M in FY94) (63003/D436)
- Initiate the CAMM program in FY 90. ($10M in FY90, $10M in FY91, $25M in FY92, $30M in FY93, and $6.95M in FY94) (63313/D263)
- Aircraft Electric Drive Systems Demo ($6.4M in FY93 and $10.682M in FY94) (63003/D897)
- Simultaneous Engagement Armament System ($2.8M in FY90, $1.0M in FY91, $1.0M in FY92, $2.4M in FY93, and $2.6M in FY94) (63004/D439)
- Dual Spectrum Pilotage Prototype ($1.6M in FY92 and $1.0M in FY93) (63710/DE86)

BEST AVAILABLE COPY

ARMY TO SPEND $150-MILLION IN FIVE-YEAR BUDGET FOR 'SOLDIER ORIENTED' R&D

The Army plans to spend $30-million/year, from FY-90 through FY-94, to support "soldier oriented research and development [r&d]," according to the Service's current internal plan for the FY-90 five-year budget (the program objective memorandum, or POM). The funds are expected to support myriad r&d programs, including manprint and training. Earlier Army plans had envisioned a doubling of funding in the next few years, according to sources, but fiscal restraints mean that the Service likely will have to curtail spending in this and other key mission areas. As a result, several programs fall out of the POM, including: verification of manprint techniques; information exchange system within corps; requirements for computer generated visual systems for aviation simulation and computerized training development; reserve component retention; and a study of the influence of family on officer recruitment, performance and retention.

The POM-90 does fund (see related chart): manning and leading through r&d efforts aimed at computerized armed services vocational aptitude battery, increased retention and enhanced leadership skills; training through artificial intelligence base maintenance training devices and work geared toward maximizing training transfer; structuring and equipping to enhance "lessons learned," database to evaluate command, control, communications and intelligence hardware, human performance in imagery intelligence; family r&d, specifically, family influence on enlisted retention and readiness; army civilian force supervisory selection, training and performance measurement; and manprint r&d vis-a-vis analytic techniques to estimate manpower personnel and training requirements.

SOLDIER ORIENTED R&D

	CURRENT PROGRAM	
	DOES	DOES NOT
MANNING & LEADING:	COMPUTERIZED ASVAB INCREASED RETENTION ENHANCED LEADERSHIP SKILLS	RESERVE COMPONENT RETENTION
TRAINING:	"AI BASE" MAINTENANCE TRAINING DEVICES HOW TO MAXIMIZE TRAINING TRANSFER	REQUIREMENTS FOR COMPUTER GENERATED VISUAL SYSTEMS FOR AVIATION SIMULATION COMPUTERIZED TRAINING DEVELOPMENT
STRUCTURING & EQUIPPING:	"LESSONS LEARNED" DATABASE TO EVAL C*I HARDWARE HUMAN PERFORMANCE IN IMAGERY INTELLIGENCE	INFORMATION EXCHANGE SYSTEM WITHIN CORPS
FAMILY R&D:	FAMILY INFLUENCE ON ENLISTED RETENTION & READINESS	FAMILY INFLUENCE ON OFFICER RECRUITMENT, PERFORMANCE RETENTION
ARMY CIVILIAN FORCE:	SUPERVISORY SELECTION TRAINING, PERFORMANCE MEASUREMENT	
MANPRINT R&D:	ANALYTIC TECHNIQUES TO ESTIMATE MANPOWER PERSONNEL & TRAINING REQUIREMENTS	VERIFICATION OF MANPRINT TECHNIQUES

ARMY DOUBLES FUNDS FOR ARMOR/ANTI-ARMOR R&D TO OVER $100-MILLION IN FY-90

The Army, in its classified internal budget for FY-90-94, is planning to double spending for "close combat heavy" (CCH) -- a move that significantly underscores Army interest in beefing up armor/anti-armor initiatives. Specifically, the Army is planning to increase CCH research and development (r&d) funds from a $60-million level in FY-89 to over $100-million in FY-90, according to documents obtained by Inside the Pentagon. The emphasis of the armor/anti-armor effort in the FY-90-94 budget period (the program objective memorandum, or POM) will be M-1, M-2 and the Armored Family of Vehicles (AFV), according to the documents. However, the POM stops short of supporting the following programs: anti-armor weapon, target demonstration and modeling; armor integration and fire suppression; and full capability of the vetronics simulation facility.

The Army's FY-90 POM supports the following armor/anti-armor r&d development programs (for

details of funding levels see related chart): Army share of Army/Defense Advanced Research Projects Agency/US Marine Corps Armor-Anti-Armor program; light weight 120mm gun demonstration; electromagnetic/electrothermal hypervelocity gun demonstration; anti-armor weapon/target demonstration; signature reduction and medium chassis armor; advanced integrated propulsion system; medium integrated propulsion system; vetronics system architecture and hardware demonstration; lighter and more durable track and advanced external suspension systems for heavy and medium chassis; integrated technology demonstrator; sensor/processor component technology in an automated target acquisition suite.

CLOSE COMBAT HEAVY (CCH)

POM 90-94 BUYS:

o Army share of Army/DARPA/USMC A^3 MOU. ($27.5/20.0/10.0; FY90-92) ($3005/D221 & 63004/D223)

o Light Weight 120mm Gun demo: transition to FSD in FY91. ($8.5 in FY90) ($3004/D439)

o Electromagnetic/Electrothermal (EM/ET) Hypervelocity Gun demo. ($7.2, 16.7, 14.9, 18.0, 12.5) ($3004/DL09)

o Armor/Anti-Armor weapon/target demo. ($0.4, 1.0, 1.0, 10.0, 5.0) ($3004/D223)

Low observable technology and medium chassis armor: develop techniques and procedures to apply advanced armor developed in the A^3 program to vehicle design and manufacturing. ($3.0, 3.0, 3.0, 6.0, 6.0) ($3005/D221)

o AIPS, Advanced Integrated Propulsion System: initiate development of electric propulsion systems (FY91-2000). ($22.4, 14.3, 10.0, 13.2, 15.2) ($3005/D441)

o MIPS, Medium Integrated Propulsion System. ($3.5, 4.0; FY90-91) ($3005/D441)

o VETRONICS system architecture and hardware demonstration (FY88-92); initiate P^3I to upgrade VETRONICS to incorporate emerging technologies in smart sensors, sensor fusion, AI, and microcircuits (FY93-2000). ($7.6, 9.0, 7.0, 8.8, 9.0) ($3005/D497)

o Lighter and more durable track and advanced external suspension system for heavy and medium chassis (FY88-91); initiate development of fully adaptive suspension systems and investigate alternative ground mobility mechanisms (FY92-98). ($8.0, 9.0, 8.0, 9.0, 11.0) ($3005/D444)

o Integrated Technology Demo of advanced technologies (LI WI 120mm gun, Barrel autoloader, modified fire control system, Advanced Integrated Propulsion System, VETRONICS, Battlefield Management System, Multiple Target Acquisition System, countermeasures. ($12.5, 13.2, 6.8, 9.4, 10.8) ($3005/D440)

o Sensor/Processor Component Technology; fusion of multiple sensors - MMW, IR, Laser - and processor modules in an automated target acquisition suite. ($0, 0, 2.8, 6.0, 4.8) ($3710/DK87)

POM 90-94 DOES NOT BUY:

o Armor/Anti-Armor weapon/target demo and modeling ($5.0/year, FY90-92) ($3004/D223)

o Armor integration techniques and fire suppression development. ($3M/year, FY90-92) ($3005/D221)

o Full capability for the VETRONICS and man-rated simulation facility (i.e., computer generated imagery, networking, and reconfiguration capabilities) ($4.8M, FY90)($3005/D497)

ARMY POM CUTS FUNDING FOR NUCLEAR, BIOLOGICAL AND CHEMICAL PROGRAMS

The Army has decided to scrap plans to increase spending for nuclear, biological and chemical programs (NBC), according to documents obtained by Inside the Pentagon. As a result of the "low" funding levels, the following programs will be slowed: decontamination, specifically, reactive powders and catalytic emulsion; detection and reconnaissance, specifically, the laser standoff detector which was "identified as must-fund during an Army program review last March," according to the document; advanced retaliatory munition systems, including incapacitating munition, incapacitating device, antimateriel munition, antiprotective munition and antiprotective device.

The Service earlier had planned to increase spending on NBC-related efforts in the FY-90-94 budget period (the program objective memorandum, or POM) but because of defense budget constraints has opted to fund NBC programs at a steady level of $4.7-million/year, according to the documents.

Army officials anticipate beginning M-1 block III work in FY-90, as well as M-2 and M-3 product improvement programs which will provide the platform for the NBC programs. In addition, Pentagon officials plan to begin work on the Armored Family of Vehicles platform for NBC efforts between FY-95 and FY-2000.

The Army's FY-90 POM funds the following efforts (for specific dollar values see related chart): decontamination programs, including sorbent systems, self-strip coat and self-decontamination coat; detection and reconnaissance efforts including CB mini-detector, CB mass spectrometer and CB mini-detector pre-planned product improvement; individual protection; and penetrant assessment.

MISSION AREA - NBC

POM 90-94 BUYS:
Decontamination:
Sorbent Sys (0,0,4,1.4,0,0X63759/E83)
Self-Strip Coat (1.2,1.4,0,0,0X63759/E83)
Self-Decon Coat (0,0,0,0,1.4X63759/E83)
Detection & Recon:
CB Mini-Detector (2.0,1.5,0,0,0X63759/E83)
CB Mass Spectrometer (0,0,2.0,0,0X63759/E83)
CB Mini-Detector P3I (0,0,0,2.0,3.3X63759/E83)
Individual Protection (0,0,1.3,2.7,0X63759/E83)
Penetrant Assessment (1.4,1.4,0,0,0X63759/E83)

POM 90-94 DOES NOT BUY:
Decontamination:
Reactive Powders (0,0,0,1.0,1.0X63759/E83)
Catalytic Emulsion (0.3,0.3,0.3,0.3,0.3X63759/E83)
Detection & Recon:
Laser Standoff Detector (2.0,2.7,5.0,5.0,0X63759/E83)*
Adv Retaliatory Munition Sys:
Incapacitating Munition (0.8,0.0, .0X63759/E83)
Incapacitating Device (0,1.0,1.4,1.4,0X63759/E83)
Antimateriel Munition (0.8,1.0,1.0,1.0,1.0X63759/E83)
Antiprotective Munition (2.2,0.0,0,0X63759/E83)
Antiprotective Device (0,2.0,2.4,2.3,2.4)(63759/E83)

* Identified as must-fund at SARDA/OPS 6.3a Program Review 12 March.

ARMY DELAYS WORK ON SENSOR, DETECTOR PROGRAMS DUE TO CUTS IN POM

The Army's FY-90 five-year budget plan for engineer/mine warfare does not include over $70-million required for five major programs aimed at enhancing detectors and sensors, according to Army defense

BEST AVAILABLE COPY

documents obtained by Inside the Pentagon.

Specifically, the Army's FY-90-94 budget (the program objective memorandum, or POM) delays "by at least two years development of new sensors, communications systems and extended range mines to improve or replace the family of scatterable mines." In addition, the POM: delays the hand-held detector by two years; slows technology demonstrations related to logistics-over-the-shore, materials handling equipment, fixed facility camouflage, barriers, defensive fighting positions, hardened structures, expedient repair of runways, roadways and port facilities; does not fund vehicle integrated power system, advanced materiel designs for generators, intelligent load distribution system or low loss/low weight cables; and delays work on the footbridge/light vehicle bridge. (See related chart for funding details.)

The POM funds the following engineer/mine warfare programs: standoff mine detection system demonstration; improved dispersed explosives to clear hardened mines; individual hand-held mine detector; heavy dry support bridge; river crossing deception system, audio simulator system, tactical inflatable deception equipment; and demonstrations of the anti-helicopter mine, command controllable mine and advanced mine warheads.

ENGINEER/MINE WARFARE

POM 90-94 BUYS:

o Standoff mine detection system demonstration; $5.0/7.3/4.9/1.6/1.6, FY 90-94. ($3606.D608)
o Improved dispersed explosives to clear hardened mines; $1.3/1.0/2.9/2.8/0, FY 90-94. ($3606.D608)
o Individual hand-held mine detector; $4.2/5.4/7.7, FY 92-94. ($3606.D608)
o Heavy dry support bridge; $1.9/1.9, FY 90-91. ($3102.BJ01)
o River Crossing Deception System; Audio Simulator System (ASIMS); tactical inflatable deception equipment; $0.9/1.1/1.0/3.1/3.1, FY90-94. ($3102.BJ01)
o Demonstrations of the anti-helicopter mine, command controllable mine, and advanced mine warheads; $3.0/year..FY 90-94. ($3606.D006)

POM 90-94 DOES NOT BUY:

o Delays hand-held detector two years; delays completion of dispersed explosives demo by three years; $29.8 total, FY90-94. ($3606.D608)
o All tech demos related to Logistics-Over-the-Shore, materials handling equipment (MHE), fixed facility camouflage, barriers, defensive fighting positions, hardened structures, expedient repair of runways, roadways, and port facilities; $8.2/3.5/3.3/4.2/2.1, FY90-94. ($3102.BJ01)
o Vehicle integrated power system; advanced materiel designs for generators; intelligent load distribution system; low loss/low weight cables; $0.4/1.3/0.9/0.6/0.4, FY90-94. ($3102.BJ01)
o Footbridge/light vehicle bridge; $1.3, FY90. ($3102.BJ01)
o Delays at least two years development of new sensors, communications systems, and extended range mines to improve or replace the family of Scatterable Mines (FASCAM); $4.8/5.1/3.9/4.2/0.5, FY90-94. ($3606.B006)

ARMY FY-90 POM STALLS WORK ON 12 COMMUNICATION TECHNOLOGY DEMONSTRATIONS

Twelve Army communication programs will be stalled or stopped as a result of the low level of funds in the Army's FY-90-94 budget (the program objective memorandum, or POM) despite an increase in funding for communication research and development (r&d) from no money in FY-89 to nearly $10-million in FY-94.

Specifically, the communications r&d programs which will be negatively impacted because of the POM include: wireless intracell communication system; cosite interference reduction; adaptive data applique; speech processing and noise cancellation; high frequency channel estimator; multiservice system; multimode digital radio; low power radio; high frequency packet; miniature high frequency modem; high frequency high "hop" data rate system; and real time "hop" set management. (See related chart for funding details.)

The FY-90-94 POM for Army communications funds the following efforts: digital ultra-high-frequency electronic counter CM applique radio (DUER); fiber optic local area network; man-portable sounder; and high-frequency solid state power amplifier/coupler.

MISSION AREA: COMMUNICATIONS
($ in MILLIONS)

FY 90-94 POM BUYS:

DIGITAL UHF ECCM RADIO (DUER)-
(1.0 0 0 0 0)
Demonstrate advanced antijam and antidirection finding capability, including frequency hopping, error correction coding, and adaptive array processing for reliable UHF line of sight multichannel radio operation.

FIBER OPTIC LOCAL AREA NETWORK (FOTLAN)-
(0.9 0.7 0.6 0.9 0.5)
Exploit MDI local area network technology to provide low cost, secure, high capacity integrated data, voice, and video interconnection for the future distributed command post. The fiber optic can connect computer terminals in vans, a grouping of vans, and interconnects among clusters of vans.

MANPORTABLE SOUNDER-
(0.2 0.1 0 0 0)
Single site sounding for HF channel selection as opposed to the current oblique sounding techniques with cooperative stations. Provides faster, more efficient utilization of scarce HF bandwidth.

HF SOLID STATE POWER AMPLIFIER/COUPLER-
(2.5 0.8 0 0 0)
Replace tube power amplifiers and mechanical antenna couplers with solid state devices to provide for increased antijam margin and improved efficiency for frequency hopped HF radios.

POM 90-94 DEFERRED 1 YEAR:

WIRELESS INTRACELL COMMUNICATION SYSTEM (WICS)-
(0 0.8 1.2 0.8 0)
Self contained net utilizing time division multiple access and ECM transmission technology to provide covert, full duplex voice and data intercommunication among mobile, dispersed command post elements.

COSITE INTERFERENCE REDUCTION-
(0 0.5 0.5 0.5 0)
Prove the effectiveness of electronically tuned, frequency hopping filters in reducing interference between collocated SINCGARS radios. Prove the capability to use narrow band filters for both transmitted and received signals to enable distributed communication systems where multiple radios are collocated.

BEST AVAILABLE COPY

ARMY GIVES SCANT FUNDING TO FIRE SUPPORT IN FY-90 FIVE-YEAR-BUDGET

Army budget plans for the FY-90-94 period calls for zero funding for "fire support" programs, according to documents obtained by Inside the Pentagon. Despite this, the Army has decided to fund nominally some fire support-related efforts, according to the Service's five-year FY-90 budget (the program objective memorandum, or POM), including liquid propellant for 155, unicharge, advanced field artillery system and dual mode seeker. However, as a result of the near-zero funding level, the following programs will be stalled: multi-option fuze; common modular fire control; next generation sense and destroy armor (SADARM); and light weight fire support. (See related chart for detailed rundown of POM funding levels.)

Other fire support technology evaluation efforts that the Army had previously considered funding include: propulsion physics; liquid propellant ignition and combustion; reaction kinetics; monolithic charge; interior ballistics models; programmed splitting stick; and millimeter wave research.

MISSION AREA - FIRE SUPPORT

POM 90-94 Buys:

Unicharge (4.2,0,0,0,0 &3004/L09)

Liquid Propellant (3.3,2.0,0,0,0 &3004/155); decrease logistics burden, provide controlled amounts of propellant, decrease vulnerability

AFAS (2.0,2.0,3.6,4.0,12.5 &3004/L09); provides enhanced deployability, mobility, and agility; ability to outrange the enemy with more accurate /lethal munitions;simplified logistics support through improved sustainability and improved propulsion systems

Dual Mode Seeker (0,1.3, 2.6, 3.1, 4.2 &3313/A04); provides seeker for MLRS or AFAS

POM 90-94 Does Not Buy:

Multi-Option Fuze (0,4.0,5.2,0,0 &3004/D439); provides handset and auto-set capabilities that will perform all fuze functions needed for bursting munitions

Common Modular Fire Control (3.0,3.0,7.8,0,0 &3004/D439)

Next Generation SADARM (6.0, 6.8, 2.0, 0, 0 &3004/232)

Light Weight 155 (1.9, 23.0, 23.0, 0. 0 &3101/D071) provides air transportable 155mm howitzer to light forces

ARMY CUTS AIR DEFENSE SPENDING IN FY-90-94 BUDGET PLAN; STRESSES NEW RADAR WORK

The Army has scrapped earlier plans to nearly double its FY-89 air defense budget of $15-million to $28-million in FY-90. Because of budget constraints, Army officials plan to increase air defense spending to $20-million-plus in FY-90, and then decrease funds to a $10-million level in FY-94. These figures are based on Army documents describing the Service's plans for the FY-90-94 internal budget (the program objective memorandum, or POM). The lion's share of air defense research and development funds, according to the document, will be spent on a "multi-role survivable radar" (MRSR). In addition to the MRSR, the plan emphasizes Forward Area Air Defense (FAAD) and the new Medium Surface-to-Air Missile (MSAM) program.

However, MRSR and several other key air defense initiatives are not fully funded in the POM, and as a result progress on these programs will be slowed, say Army officials. Other air defense programs which will be slowed as a result of reduced funds include: missile hardware-in-the-loop simulation, advanced manufacturing research and minimum signature propellant development.

The Army plans to begin full-scale development work on the FAAD command, control and intelligence (C2I) block II in FY-91; FAAD line-of-sight forward-heavy (LOS-F-H) block II in FY-92; FAAD pedestal-mounted Stinger (PMS) pre-planned product improvement (P3I) in FY-92; FAAD non-line-of-sight anti-tank in FY-94; and MSAM in FY-93.

Other air defense initiatives funded in the POM (see chart) include: the advanced air defense electro-optic (EO) system; and missile and rocket manufacturing technology.

AIR DEFENSE

POM 90-94 BUYS:

o Advanced Air Defense E-O System (AADEOS) ($1.928M in FY89, $8.749M in FY90, $3.158M in FY91 and $0.5M in FY92) (63710/DE70)

o Multirole Survivable Radar (MRSR) ($8.5M in FY90, $6.84M in FY91, $4.29M in FY92, and $4M in FY93) (63313/D271)

o Minimum Signature Propellant Development ($1.5M in FY90, $2M in FY91, $2.5M in FY92, $2.5M in FY93, and $2.5M in FY94) (63313/D401)

o Missile Hardware-in-the-Loop Simulation ($3.5M in FY90, $3.5M in FY91, $4.5M in FY92, $4.5M in FY93, and $4.6M in FY94) (63313/D206)

o Missile and Rocket Manufacturing Technology ($2.5M in FY90, $2.6M in FY91, $2.7M in FY92, $2.8M in FY93, and $2.9M in FY94) (63313/D087)

POM 90-94 DOES NOT BUY:

o Missile Hardware-in-the-Loop Simulation ($0.5M in FY90, $0.5M in FY91, $0.5M in FY92, $0.5M in FY93, and $0.6M in FY94) (63313/D206)

o Multirole Survivable Radar (MRSR) ($4.1M in FY90, $0.06M in FY91 $0.49M in FY92, and $0.4M in FY93) (63313/D271)

o Advanced Manufacturing Research ($1.5M in FY90, $1.4M in FY91, $1.3M in FY92, $1.2M in FY93, and $1.1M in FY94) (63313/D087)

o Minimum Signature Propellant Development ($1.5M in FY90, $1.0M in FY91, $0.5M in FY92, $0.5M in FY93, and $0.5M in FY94) (63313/D401)

BEST AVAILABLE COPY

Despite earlier plans to hike intelligence funds

ARMY POM LIMITS SPENDING ON INTELLIGENCE, ELECTRONIC WARFARE TO $30-MILLION/YEAR

The Army, in its internal FY-90-94 budget, is spending $30-million/year on research and development demonstration programs for intelligence and electronic warfare (IEW), according to Army budget documents obtained by Inside the Pentagon. DOD had planned to hike funds for IEW to as much as $60-million in FY-91, however defense budget constraints and higher priorities have precluded the Army from following through with the plan.

Specifically, the FY-90-94 budget (the program objective memorandum, or POM) buys the following (see related chart for funding details): communications jammer "2000," including the artificial intelligence integration jammer and forward area jammer; advanced electro-optic countermeasures system, comprising the airborne countermeasures transmitter (ACT) direct energy technology (DET) "TRK" technology and forward looking infrared (FLIR) detection and jamming and effects simulation; advanced infrared countermeasures system, including "IMPRV" sources high frequency, jam wave capability and electronic "MOD" technology; "ALBE" tactical "DEC" aids; autonomous unmanned vehicle sensor; unmanned aerial vehicle lock and track; unmanned aerial vehicle moving target indicator radar; and grenade shadow.

The Army's FY-90-94 POM for IEW r&d stops short of supporting the following programs: non-communications jammer 2000, including wide band millimeter/microwave, advanced "MOD" and "PWR" management and "SP/WT/PR" reduction; enhanced communications jammer 2000, comprising advanced jamming control and "MOD" jamming architecture; electronic warfare support measures (ESM)/electronic intelligence tactical systems including "INCR" "SENS" and "LOC" "ACCUR" and "INCR" data thruput; "ALBE" enhanced tactical "DEC" aids; "HELLOCS" demonstrations; unmanned aerial vehicle/synthetic aperture radar x-band radar; unmanned aerial vehicle/synthetic aperture radar y-band radar; airborne ultra-light radar; and bistatic radar.

INTELLIGENCE/ELECTRONIC WARFARE

PROJECTED SYSTEMS APPLICATIONS

1990-1994	1995-2000	2000-2005
TACJAM-A	QUICKFIX III	COMM JAMMER 2000
STINGRAY	AERIAL COMM JAM	NON-COMM JAM 2000
CAMEO BLUEJAY	GUARDRAIL PIP	INTRCPT/COLL 2000
DTSS,MCS & ASAS PIP	TEAMPACK PIP	
	TEST WEATHER SYS	
	FAMILY OF UAV's	

POM 90-94 BUYS:	POM 90-94 DOES NOT BUY:
COMM JAMM 2000	NON-COMM JAMM 2000
AI INTEG JAMMER	WIDE BAND MM/MICROWAVE
FWD AREA JAMMER	ADV MOD & PWR MGMT
ADV EOCM SYST	SP/WT/PR REDUCTION
ALT DET TRK TECH	ENHANCED COMM JAMM 2000
FLIR DET/JAM	ADV JAMM CONTROL
EFFECTS SIM	MOD JAMM ARCH
ADV IRCM SYS	ADV ESM/ELINT TACT SYS
IMPRV SOURCES HF	INCR SENS & LOC ACCUR
JAM WAVE CAPABILITY	INCR DATA THRUPUT
ELECT MOD TECH	ALBE ENH TACT DEC AIDS
ALBE TACT DEC AIDS	HELLOCS DEMO'S
AUTO UNMAN VEH SENSOR	UAV BASED JAMMER
UAV LOCK & TRACK	UAV/SAR X-BAND RADAR
UAV MTI RADAR	UAV/SAR Y-BAND RADAR
GRENADE SHADOW	ABN ULTRA LT RADAR
	BISTATIC RADAR

ARMY FIVE-YEAR BUDGET PLAN CUTS FUNDS FOR TEN COMBAT SERVICE SUPPORT PROGRAMS

The Army, in its internal five-year budget for FY-90-94, is falling far short of original plans to increase spending on combat service support (CSS) research and development from current levels of $10-million/year to nearly $35-million/year. Instead, according to documents obtained by Inside the Pentagon detailing the Service's plans for its FY-90-94 budget (the program objective memorandum, or POM), the Army will maintain a CSS r&d budget throughout the POM period of about $10-million/year. As a result of the budget cut, ten CSS programs will be stretched out.

The programs which will be slowed as a result of POM CSS budget reductions include: low altitude retrorocket airdrop system; soldier survivability tech demos; monolithic 6-port modules; technology

demonstration of a combustion quality monitor and fuel elastomer test methodology to extend shelf life of collapsible fuel tanks; proof of principle demonstration of a chassis mounted rearm/resupply module for the light weight 120mm armament system; demonstration of containerization and tactical resupply vehicle integration; test program set development for pedestal-mounted Hawk; Army integrated diagnostics maintenance environment; and automated test equipment translator development.

The FY-90-94 POM funds the following CSS programs (see related chart): 500 feet/250 knot personnel airdrop system; three soldier survivability technology demonstrations; demonstration of the portable lube quality monitor; demonstration of rearm systems for current and future howitzers; development of weapon system diagnostic/prognostic and automatic test equipment technology; common-abbreviated test language all systems; infrared automatic mass screening and mechanical infrared inspection and diagnostic systems; and test metrics software tools.

COMBAT SERVICE SUPPORT (CSS)

POM 90-94 BUYS:

o 500 ft/250 knot Personnel Airdrop System: $1.7/year FY90-92. 300 ft/250 knot Personnel Airdrop System: $1.8/2.0, FY93-94. ($3001.D242)

o Three soldier survivability tech demos: Individual Soldier Microclimate Conditioning Vest to reduce heat stress when in protective clothing, reduce equipment weight, and improve durability; Integrated Protective Clothing to add ballistic portection to uniforms; and Integrated Protective Helmet to improve ballistic/impact/spall protection; $0.9/1.0/1.4/1.4/2.0, FY90-94. ($3001.DXXA)

o Demonstration of the portable lube quality monitor; evaluation of a field fuel pretreatment unit to separate off-spec fuels and make them usable; user testing of the single fuel on the battlefield; a first generation accelerated fuel qualification procedure; field expedient fuels testing (performance vs quality tradeoff); development of fuels and lubes for AIPS; demonstration of improved military GAA grease; $2.1/2.1/2.2/2.3/2.5, FY90-94. ($3001.D1501

o Demos of rearm systems for current/future howitzers; explosive ordinance disposal demonstration; ammo packaging and containerization; $1.9/1.9/1.9/2.0/2.2, FY90-94. ($3001.D543)

o Development of weapon system diagnostic/prognostic and automatic test equipment technology; $1.8/year, FY90-94. ($3001.DJZB)

o Common-Abbreviated /Test Language All Systems (C-ATLAS) for electro-optics, spread spectrum, millimeter wave, and VHSIC devices; $1.0 total, FY90-94. ($3001.DJZB)

o Infrared Automatic Mass Screening (IRAMS) and Mechanical Infrared Inspection and Diagnostic Systems (MIRIDS) to detect failed printed circuit boards and isolate faulty components, respectively, through infrared means; ($0.6 total, FY90-94. ($3001.DJZB)

o Test metrics software tools; Test Program Set (TPS) database/data network expansion and maintenance; TPS Life Cycle Cost Model testing and integration; Computer Aided Design (CAD) development and integration; $1.0/year, FY09-94. ($3001.D244)

POM 90-94 DOES NOT BUY:

o Low Altitude Retrorocket Airdrop System (LARS) ($.4 funded in FY92) tech demos; $2.5/year, FY90-94. ($3001.D242)

o Soldier survivability tech demos: Body Armor, Protective Footwear, Protective Neowave, fire resistant clothing; $2.4/2.6/2.9/3.1/3.1, FY90-94. ($3001.DXXA)

o Monolithic 6-port modules to test functioning of MMIC chips; error analysis on automatic network analyzers; National Laser Beam Profile Standard for BaO (at NBS); $1.0/1.0/1.3/1.4/1.5, FY90-94. ($3001.D594)

o Tech demo of a combustion quality monitor; fuel elastomer test methodology to extend shelf life of collapsable fuel tanks; $1.1/1.2/1.4/1.3/1.5, FY90-94. ($3001.D1501

o Proof of Principle demonstration of a chassis mounted rearm/resupply module for the Lt Wt 120m Armament System; $4.5 total, FY90-94. ($3001.D543)

o Hardware and software improvements to the Class V Logistics System to meet Congressional mandate for improved ammo accountability; $2.0 total, FY90-94. ($3001.D543)

o Demonstration of containerization and Tactical Resupply Vehicle integration (Congressional interest); $1.4 total, FY90-94. ($3001.D543)

o Test Program Set (TPS) development for PM Hawk, AMC Test Program Set Centers and depots, etc.; $2.3 total, FY90-94. ($3001.DJZB)

o Army Integrated Diagnostics Maintenance Environment (AIDME) with a computer-aided engineering workstation to "design-in" built-in tests to support two level maintenance and to capture design and test data; $9.1 total, FY90-94. ($3001.DJZB)

o Automated Test Equipment (ATE) Translator development; Analog Automatic Test Program Generator (ATPG) for ATLAS; ATLAS reusable code library; Test Trade Off analysis and implementation; $1.3/year, FY90-94. ($3001.D244)

ARMY DOUBLES FUNDS FOR CLOSE COMBAT 'LIGHT' MISSIONS IN POM TO AID M2, M3, AFV

Army officials are planning to rejuvenate funds for the "close combat light" (CCL) mission area in the FY-90-94 budget period, with efforts expected to focus on small arms weapons demonstrations, insensitive munitions -- the XM919 -- and a next-generation armament known as "com vat." The efforts will have primary application on the M2 and M3 tanks and the Armored Family of Vehicles (AFV) and are based on recommendations contained in the recently drafted "Small Arms Master Plan." (For specific funding levels see related chart.)

Over the FY-90-94 budget period (the program objective memorandum, or POM) funding for research and development efforts for CCL will be increased from approximately $8-million in FY-89 to $17-million in FY-94, according to Army budget documents obtained by Inside the Pentagon. However, according to the documents, the POM-90-94 does not fund the cannon caliber caseless ammunition.

The Army plans to conduct exploratory research in the following CCL areas: insensitive propellants and explosives; linkless feed systems; telescoped ammunition; advanced small arms penetrators; modular fire control; high impact fragmentation; and "EM/ET" propulsion for small arms. CCL development efforts will be aimed at advanced small arms and production of a light combat vehicle armament.

MISSION AREA - CLOSE COMBAT LIGHT

POM 90-94 BUYS:

Small Arms Weapon Demos (per SAMP) (7.7,7.9,8.0,8.2,8.3)(63607/D627)
Insensitive Munition XM919 (0.3,0.3,0.2,5.0)(63004/439)
ComVat (0,0,0,4.7,7.9)(63004/439)

POM 90-94 DOES NOT BUY:

Cannon Caliber Caseless Ammo (0,2.9,2.7,2.8,0)(63004/439)

ARMY TAILORS FY-90 FIVE-YEAR COMMAND/CONTROL BUDGET FOR NEW ATCCS PROGRAM

DOD is tailoring its five-year FY-90-94 budget (the program objective memorandum, or POM) for Army command and control toward the Army Tactical Command and Control System (ATCCS) and will spend over $40-million in the FY-90-94 period on technology demonstration efforts aimed at application on ATCCS, according to Army budget documents obtained by Inside the Pentagon.

Specifically, the Army's POM supports the following command and control r&d initiatives (see related chart for funding levels): battlefield management system; force level control surface warfare; Army secure operating system; airland battle management; and battlefield coordination element.

The Army's FY-90 command and control plan does not fund the expanded airland battle management initiative, according to the budget documents.

MISSION AREA: COMMAND & CONTROL
($ in MILLIONS)

FY 90-94 POM BUYS:

BATTLEFIELD MANAGEMENT SYSTEM (BMS)-
(2.8 3.1 3.5 3.5 2.8)
Lower echelon command & control system. Will integrate and coordinate all arms elements at battalion and below. Will interface to upper echelons via ATCCS, primarily thru MCE.

FORCE LEVEL CONTROL SOFTWARE (FLCS)-
(2.1 3.0 4.6 4.7 4.5)
Common suite of software tools for integrating functions across the nodes of the Sigma Star, for interfacing with echelons above Corps and NATO allies, and will serve as the ATCCS gateway to lower echelon C2 systems such as BMS.

ARMY SECURE OPERATING SYSTEM (ASOS)-
(2.5 0 0 0 0)
Multilevel security and protection of classified information for operating systems in tactical C2 computer systems.

AIRLAND BATTLE MANAGEMENT (ALBM)-
(2.0 0 0 0 0)
Artificial Intelligence/Expert System based automation of planning and orders generation for maneuver at Corps, maneuver at Division, and Fire Support at Corps.

BATTLEFIELD COORDINATION ELEMENT (BCE)-
(1.0 2.5 0 0 0)
Provides coordination between land component commanders and air support. Addresses airspace requirements, air tasking orders, and air coordination orders.

POM 90-94 DOES NOT BUY:

ENHANCED AIRLAND BATTLE MANAGEMENT-
(1.0 3.0 4.0 4.0 3.0)
Expand the ALBM expert system methodology to automate planning and decision making across the IEW, AD, and CS/ nodes of Sigma Star.

POM 90-94 DEFERRED 1 YEAR

ADAPTIVE DATA APPLIQUE-
(0 0.5 0.5 0.5 0)
Automatic/adaptive selection of coding and data rates for use in radios such as SINCGARS to increase throughput and reduce error rates when communicating in poor conditions. Will provide for performance optimization of existing single channel systems.

SPEECH PROCESSING AND NOISE CANCELLATION-
(0 0.5 0.5 0 0)
Demonstrate increased voice intelligibility in the high noise environment of tracked vehicles using advanced acoustic modelling and speech processing techniques.

HF CHANNEL ESTIMATOR-
(0 1.0 0.5 0 0)
Demonstrate improved capability to predict HF channel propagation conditions, for optimized channel selection and more efficient use of the HF spectrum.

MULTISERVICE SYSTEM-
(0 0.5 0.4 0 0)
Automation tools for the Signal Corps Commander for network management, frequency management, and communications security management for integrated system control for Army communications systems such as MSE, EPLRS, JTIDS, Combat Net Radio, and TACSAT.

POM 90-94 DEFERRED 2 YEARS:

MULTIMODE DIGITAL RADIO-
(0 0 2.0 3.0 3.0)
Demonstrate solid state, digital transceivers capable of operating across HF, UHF, or VHF spectrums with all attendant modulation modes and antijam techniques. Will eliminate strict differentiation between HF, UHF, and VHF to provide optimally adaptive communications most appropriate for a particular mission requirement.

POM 90-94 DEFERRED 3 YEARS:

LOW POWER RADIO-
(0 0 0 2.0 3.0)
Demonstrate significant size, weight, and power reduction in hand held radios including antijam and low probability of intercept features. Payoff is reduced soldier's load and simplified logistics with reduced battery consumption.

POM 90-94 DEFERRED 4 YEARS:

HF PACKET-
(0 0 0 0 0.8)
Demonstrate the ability of software modifications to the HF modes to support HF packet networks. Will provide for much improved utilization of the HF spectrum by transmitting and receiving in packets rather than continuously.

MINIATURE HF MODEM-
(0 0 0 0 1.0)
Demonstrate 2400 bits per second data transmission while frequency hopping in a manportable package. This will permit secure digital speech with antijam capability, and reduce time on air.

HF HIGH HOP DATA RATE SYSTEM-
(0 0 0 0 1.0)
Demonstrate the communications technology to provide 2400 bits per second data rates, frequency hopping at 2400 hops per second, and reduced interference to provide enhanced antijam performance in groundwave transmissions.

POM 90-94 DOES NOT BUY:

REAL TIME HOP SET MANAGEMENT-
(0 0 0 0.5 1.0)
Improve overall performance of frequency hopping communications systems and spectrum usage by adaptively changing hopset frequencies which are degraded by jamming or other reasons.

FACT SHEET ON THE NAVY'S AEGIS 400G PROCUREMENT (PREPARED BY THE STAFF OF THE SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT)

February 24, 1989

In August 1988, at the direction of Senator Carl Levin (D-Mich.), chairman of the Senate Subcommittee on Oversight of Government Management (OGM Subcommittee), the OGM staff began a review of a $27.7 million dollar engineering and technical support services contract associated with the Department of the Navy's Aegis Shipbuilding Program's Combat System, a major weapons system installed on the Navy's CG-47 Class cruisers and DDG-51 Class Destroyers. The purpose of the review was to ascertain the extent to which unauthorized disclosures of information adversely affected the procurement of the support contract for the Aegis 400G Systems Acquisition Division.

During the fall of 1988, the OGM staff interviewed numerous Navy officers and civilian employees knowledgable about the procurement for the Aegis 400G office. In addition, the staff reviewed reports prepared by the Inspector General of the Navy Sea Systems Command (NAVSEA) concerning allegations of unauthorized disclosure of procurement information by Navy employees and bidders for the Aegis 400g contract.

Over the course of the inquiry, the OGM staff identified serious problems relating to disclosures of inside information, and with the competitive atmosphere surrounding the procurement for the Aegis 400G office. These concerns, documented in NAVSEA Inspector General reports and confirmed in interviews with OGM staff, include: unauthorized disclosures of cost information; improper leakage of confidential technical information; and numerous allegations of favoritism, sexual impropriety and illicit spying tactics among competitors. While many of these allegations were found to be unsubstantiated, they adversely affected and delayed the competition for this procurement.

The Navy's official investigations into these allegations resulted in at least two major reorganizations of contract and technical evaluation panels within the Aegis

400G Systems Acquisition Division during the course of this procurement. These actions were described as unusual to Subcommittee staff by Navy officials. They caused considerable delay and additional expense, both to the Navy and to the companies competing for the Aegis 400G contract.

A Brief History

Request For Proposal (RFP) N00024-86-R-5199 (Q) was issued May 21, 1986, as a small business set-aside for engineering and technical services for the Aegis Shipbuilding Program. The RFP combined efforts from five previously existing contracts into one Cost-Plus-Fixed-Fee (CPFF) contract for one year, with four one-year options.

An attachment to the RFP entitled "Evaluation Factors for Award" provided that proposals would be evaluated in two categories--technical and cost. Offerors were informed that the technical category was considered to be slightly more important than cost. The RFP listed four criteria within the technical category, in descending order of importance: technical approach, experience, management approach and facilities, with facilities being much less important than the other criteria.

The Navy called for submission of proposals by July 15, 1986. Ninety-five firms were solicited and four firms responded by submitting proposals. Offers were received from Adeena Corporation, ANADAC, Resource Consultants, Incorporated (RCI), and Wheeler Industries.

A Contract Award Review Panel (CARP) reviewed the initial technical evaluation and determined that three offerors-- ANADAC, Wheeler and RCI-- were within the competitive range. The Navy conducted two rounds of discussions with the three offerors and called for best and final offers (BAFOs) by letters dated November 12, 1986 and February 10, 1987.

Allegations Surface

During the latter stages of the evaluation process, the Navy received telephone calls to the departmental hotline from somone claiming to be a 400G employee. This informant alleged offers of sexual favors by an employee of one of the offeror's subcontractors. The procurement process was delayed while this allegation was investigated by the NAVSEA Inspector General and found to be unsubstantiated in a February 5, 1987, report. During the same period, allegations were received that the offerors were spying on each other, but such actions were considered to be outside the responsibility and control of the government, according to the Navy's written file.

However, the same Inspector General's report concluded that "it appears someone has leaked out cost data to

companies involved in the solicitation". The source of the leak was not discovered. But a Navy civilian manager was removed from further participation in the procurement because of concern by his superiors involving allegations of supposed favoritism towards one of the contractors, according to interviews conducted by the Subcommittee staff. Subsequently, the Inspector General and other NAVSEA officials concluded that the cost data in question was known to the companies which had submitted proposals on this contract. Therefore, the leak had not "compromised" the competition process, which was permitted to proceed.

Nevertheless, the existence of the allegations suggested corrective action, and on March 20, 1987, NAVSEA officials agreed that new CARP and TERP evaluation panels should be formed to re-evaluate the original technical proposals. The dissolution and reconstitution of these evaluation panels was termed "extraordinarily unusual" by NAVSEA's assistant deputy commander for contracts in an interview with Subcommittee staff. The panels, with new members, were appointed on June 11, 1987.

Later in the procurement process new allegations of unauthorized disclosures of information were received by the Navy. On February 10, 1988, a representative of offeror RCI reported to the Aegis 400G contracting officer that there had been a leak of procurement sensitive information by a member of the new CARP panel. This information "stopped everything in its place," according to the Aegis 400G contracting officer, while another investigation was conducted by the NAVSEA Inspector General.

The Inspector General's office interviewed the referenced CARP member and learned that during an earlier conversation with a longtime friend, he had disclosed raw technical scores and findings of the technical evaluation panel (TERP), as well as confidential information on the cost differentials between the offerors' proposals.

In an interview with Subcommittee staff, the Navy employee accused of the leak, now retired, termed the disclosures "a mistake...a dumb thing". He acknowledged having signed a non-disclosure agreement regarding procurement-related information and agreed that he had violated it by disclosing the cost and technical information. He was removed from the CARP panel and subsequently received a letter of reprimand prior to his retirement. Again, the CARP members determined that the leak, while inappropriate, did not adversely affect the proposals' evaluation, and it was allowed to proceed.

The General Accounting Office subsequently denied several protests filed against the Navy's decision to award

the Aegis 400G support contract to ANADAC, and the final award was made in December 1988.

The Competitive Atmosphere

In interviews with Subcommittee staff, both NAVSEA officials and representatives of the offerors described a highly-charged, competitive atmosphere surrounding the Aegis procurement which created what one offeror described as "three hungry dogs" going after "one bone on the table". The same executive claimed that each of the offerors was doing some informal "spying" and attempting to learn bid rate information on the others from friends and contacts, although he denied that his employees enagaged in any illegal conduct during the procurement process.

A retired Navy captain who had been in charge of the Aegis 400G office during part of this procurement told the Subcommittee staff that the bitter nature of the competition among the contractors was created by a "hungry environment", which caused these companies to become desparate to win or retain existing contracts in the Aegis Shipbuilding Program. This atmosphere contributed to the disruptive level of information leaks, gossip and rumor which delayed the procurement.

Effects

The final award of the contract in December 1988 was made a full two-and-a-half years after the initial Request For Proposal was issued. One 400G employee familiar with the process told Subcommmitee staff estimated that ten months to a year would be a normal time frame for such a procurement. It is difficult to determine just how much of the extended delay in completing the procurement was due to the improper disclosures and other allegations of misconduct investigated by the NAVSEA Inspector General. But certainly much of the time and expense involved can be attributed directly or indirectly to the leaks and the resulting reorganizations of the evaluation panels.

A Navy employee of the Aegis surface warfare equipment department told the Subcommittee staff in late October 1988 that his office was at that time "dead in the water", with a three-to-four month backlog of work, partially due to the repeated delays with the Aegis 400G procurement which existed at that time.

DISPOSITION FORM

For use of this form, see AR 340-18; the proponent agency is TAGO.

REFERENCE OR OFFICE SYMBOL	SUBJECT
CSSD-LC (600-50a)	Contacts with Industry Concerning USASDC Acquisition Plans

TO SEE DISTRIBUTION FROM Legal Office DATE 22 Dec 88 CMT 1
Mr. Hamilton/of/4680

1. Because of recent events, the Congress and DoD are giving renewed emphasis to long-standing restrictions on improper release of advance acquisition information. Army Regulation 600-50, Standards of Conduct for Army Personnel, paragraph 2-1g prohibits DA personnel from unauthorized or improper release of acquisition information.

2. Within USASDC, the following guidance applies:

a. Before work begins on the draft scope of work for the initiation of a Contract Requirements Package (CRP), potential sources may be provided equal access to information about future requirements as follows:

(1) Long range acquisition information or other advance planning information should be formally published in accordance with existing regulations such as FAR 5.404, AFARS 5.391, and AR 70-35.

(2) There is no requirement that technical personnel or others discuss planned acquisitions with potential offerors. However, if discussions are undertaken, they will be done on a basis which assures equal access of all offerors. Discussions by technical personnel or others may include the technical information which allows potential offerors to determine whether the planned requirement is within their firm's capabilities and area of interest so they may prepare to respond to a solicitation. Government personnel have wide latitude in discussing the technical content of proposed solicitations with potential offerors, and items such as background of, and objectives for, the requirement may be covered. In this respect:

(a) Releaseable background information on the technical requirement includes prior contractual history, if known, and technological advances or knowledge gained or developed by the government which could be helpful.

(b) The objectives for the technical requirement, which may be discussed, normally addresses the purpose of the requirement and desired results or products. Discussion of additional details may be appropriate, but in no instance should offerors be given a "solution" or otherwise be given advice on "how" to respond to a future solicitation.

(3) In addition to technical information, releaseable information on program structure, which includes funding ranges, planned solicitation dates, and contract duration, may be offered. This information should have been previously provided to the public in long range estimates or similar publications. The government employee who provides this information should identify the publication which contains the information, or state when and in what publication the information will be available. If the information is not contained in published long range estimates, the information should be made available as early as practicable as provided in paragraph 2a(4) below. Offerors should be cautioned that all programs discussed are in the planning stage and are subject to changes or cancellation. Under no circumstances will information normally retained in the government, such as Independent Cost

DA FORM AUG 80 2496 PREVIOUS EDITIONS WILL BE USED

CSSD-LC
SUBJECT: Contacts with Industry Concerning USASDC Acquisition Plans

Estimates, source selection plans, acquisition strategies, and other matters dealing with the contracting process as opposed to the technical requirements be released.

(4) Copies of information provided during any discussions, must, consistent with security restrictions, be made available to all other interested potential sources. When new information is provided during a particular briefing, an information sheet should be prepared by the briefing office which advises potential sources of the new information and how details may be obtained. The sheets should be coordinated with the Contracting and Acquisition Management Office and released to potential sources by cognizant contracting officer.

(5) The use of viewgraphs or other briefing material to standardize the presentations is encouraged. All discussions must comply with applicable security restrictions.

b. Once work begins on the draft scope of work for initiation of the Contract Requirements Package (CRP) process, the development and preparation phase of an acquisition has begun. Further communication will be through the contracting officer. Before the solicitation is released, these communications may include technical meetings as long as they are under the monitorship of the contracting officer. Once the solicitation is issued, the rules contained in the solicitation apply and questions of potential offerors will be answered in the manner requested by the contracting officer. Normally, this is in writing through the contracting officer. Accordingly, during this phase, potential offerors having questions will be directed to the contracting officer for information.

c. Under no circumstances will information normally retained within the government, such as Independent Cost Estimates, source selection plans, the status of evaluations, the content of competing proposals, and other matters dealing with the contracting process be released.

3. Broad Agency Announcements and other special solicitation methods will follow the rules applicable to the solicitation type. Under no circumstances will offerors be promised or otherwise be given reason to believe that they will be provided a contract unless and until selected in accordance with applicable procedures.

ROGER G. DARLEY
Colonel, JAGC
Chief Counsel

DISTRIBUTION:
A (less USAEDH)

Stratford, Virginia 22558
28 March 1989

The Honorable Carl Levin
Chairman, Senate Subcommittee on Oversight
of Government Management
Suite 442, Hart Office Building
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Thank you for permitting me to respond to what was presented in your hearings of 24 February 1989. I understand that this statement will be part of the record. I will attempt to be brief.

In July 1987, someone wrote an anonymous letter to the authorities alleging several improprieties by me. This letter was given to the Criminal Investigation Detachment (the Army's CID Command) to analyze and investigate. The only request made by the anonymous letter writer was that an award by the Army's Strategic Defense Command (SDC) (the Army agency in charge of the Army's portion of SDI or Star Wars) of the Combined Allied Defense Effort (CADE) contract be delayed until the allegations had been analyzed. This request by the letter writer was unknown to me at the time since I was not given access to the letter. I believed and still believe that the request was a reasonable one.

Neither the CID (or Government Accounting Office (GAO) which assisted the CID) nor Army authorities suggested or directed a delay of the September 1987 award of that contract so that if there had been any impropriety or irregularity, such impropriety or irregularity could have been corrected or a new request for bids initiated rather than award the contract under a cloud if there had been any wrongdoing. Such a request for reasonable delay could have been given to my procurement boss--either the Assistant Secretary of the Army for Research and Development or the Under Secretary of the Army or to me. There was no such request.

The CID with agents untrained in procurement rules, regulations, law, and procedures conducted, in my opinion, an unprofessional and maladroit investigation lasting eight and one-half months. Investigators interviewed and re-interviewed witnesses (one as many as five times) apparently finalizing the investigation in December 1987 only to discover after briefing the Army and Secretariat legal staff that there was apparently no probable cause. At that time, the investigation was in effect reinitiated with additional legal and procurement advice from

another major command the Army Material Command (AMC). The CID finally concluded their investigation in February 1988.

The result of this investigation was that the report endorsed by the Major General Commander of the CID determined that there was no criminality on my part but that I had violated an Army Regulation (AR600-50) in providing procurement information to Dr. Joseph Braddock of BDM at a staff meeting December 1986 (presumably giving BDM an unfair advantage in competition for the permanent CADE contract to be competed later and awarded in September 1987) and in that I had given the appearance of preferential treatment to a contractor (BDM).

The facts of the matter are:

- At the time of the 19 December 1986 meeting, BDM was already the interim contractor for CADE and was assisting the command in executing the CADE contract until we obtained a permanent CADE contractor on board. An interim contract was necessary to get quickly on with the business of defense against short range, tactical missiles. The briefing concerned the on-going work with which BDM was assisting SDC.

-BDM was known to be a candidate for the competition for the permanent CADE contract but, in the interim period, pending the award of a permanent contract, there was only one other candidate on an existing, on-going task assignment contract with my command capable of doing the interim CADE work. That corporation was Teledyn Brown Engineering (TBE) which was essentially in an overrun position ("out of hours") on its contract; this meant that if we had selected TBE instead of BDM as the interim CADE contractor, we would have had to award a new contract to TBE on a sole source basis (without competition). A sole source contract without extensive justification is against Army and Defense procurement policy. My senior contract advisors and I felt this justification was lacking. Notwithstanding the fact that BDM had sufficient available hours under the existing BDM contract with the Kinetic Energy Work Package and the fact that TBE was out of hours and in an overrun position, there were more important business reasons to select BDM as the <u>interim</u> CADE contractor in September 1986. These reasons went to the need for immediate CADE support at the time (in the interim) and familiarity of BDM with the required effort based on similar work done and being done at the time by BDM (ERINT, FLAGE) for the command. These matters are well documented in the file and in my written protest to the CID (previously furnished to your committee staff). The facts of the matter were that BDM was in a stronger technical position, had the hours available to accomplish the <u>interim</u> work under an <u>existing</u> contract, and could commence the interim CADE work immediately to get the ball rolling.

-The December 1986 meeting dealt essentially and almost entirely with an integral effort within the interim CADE program--INVITE, SHOW, TEST (IST) - - which was a critical program with international and political implications important to the President, to the Secretary of Defense, and to my programmatic boss Lt. General James Abrahamson who said in late 1986 that "IST must be started now". The interim CADE contractor, BDM, was an integral member of the Army-contractor team to help commence IST as soon as possible (but not to evaluate IST proposals).

-Information presented to and by my staff at the 19 December 1986 briefing was previously presented industry-wide at the Theater Missile Defense acquisition strategy portion of the Conference to Industry on the Command's SDI program in Washington, D. C. September 1986 and also industry-wide in the similar USAF conference 11 December 1986 at Andrews AFB, Maryland (prior to the 19 December 1986 meeting in my conference room). Several thousand mailings of handouts and copies of these two presentations were sent to all firms that had shown an interest. Information on CADE, IST, and SDC's procurement strategy was common knowledge to both the industry and to potential CADE bidders. These facts were documented in enclosures to my statement to the CID in November 1987 but were ignored or discounted by the investigators. I re-emphasized and expanded these points in my written rebuttal of 12 July 1988 to the CID (provided to your staff) which it (the CID) may not have provided to interested parties. Again, procurement information shown or discussed at the 19 December meeting was in fact either released at industry-wide meetings earlier in September and December (hand-outs and copies of slides used were mailed out to several thousands of attendees and other representatives of industrial firms) or was of such a nature as to have been common knowledge to any potential contractor capable of performing the CADE work.

-Those in Army procurement, including my advisors in SDC believed during this time and still believe that any procurement information given to or obtained by a contractor must provide an unfair advantage to that contractor to be a violation of AR600-50. This is also obviously true of those in the Army Material Command (AMC), the Army's largest procurement agency or command. When the CID in December 1987 reached an impasse on how to proceed with its investigation after six months of effort, it (CID) sought and received legal procurement advice from an AMC attorney. This advice was suggested and provided through the Army's Judge Advocate General. GAO Associate General Counsel Robert P. Murphy in his 24 February 1989 testimony to your

Subcommittee stated "... a procurement attorney for the Army Material Command concluded that unless it was established that the information provided gave BDM an advantage, there would be no violation of Army Regulation 600-50. As a result of this view, the investigating agent was instructed to reinterview witnesses to determine whether BDM received an advantage from information it received on December 19, 1986. The results of these subsequent interviews were inconclusive. Army CID then concluded that, irrespective of the view of the Army Material Command attorney, actual advantage to a potential contractor is not required for a violation of Army Regulation 600-50." (Emphasis added.)

It seems clear that there is confusion as to what AR600-50 means. It also appears that the CID modifies its interpretation of rules, standards, and regulations as it proceeds adjusting them to fit its views as the situation develops. In any event, that the CID chose to modify its interpretation of the law rather than analyze the data in terms of "advantage to the contractor" strongly suggests that an analysis of the data would have led to the conclusion that there was no advantage to the contractor.

-The Request for Proposals (RFP) for the permanent CADE contract was advertised industry-wide. We did not solicit 74 bidders, we solicited industry-wide and had representatives from 74 firms pick-up or ask for the written request for proposal packages.

-Some of the 74 were foreign contractors or sub-contractors who were ineligible to bid on CADE. We never expected more than three or four bidders but we, in fact, received only one bid--that from BDM. In reviewing the situation subsequently, my Principal Assistant Responsible for Contracting (PARC) determined that BDM, in preparation for its bid for the permanent CADE contract had formulated an impressive joint venture team consisting of the "cream" of the aerospace industry which possessed impressive credentials in the anti-tactical missile field. This situation was common knowledge in the industry.

-It is not at all unusual to have only one bidder answer a solicitation. There were sole bidders for eight competitive contracts in my command in 1987.

I have taken formal written exception to the CID findings. Strangely, the appellate authority for the CID is the CID. I made requests to the CID through the Freedom of Information Act (FOIA) to obtain additional information. Also under FOIA, I am attempting to have access to the intemperate, and I believe, unprofessional and premature determination in August 1987 (before the investigation had commenced) by the CID counsel who wrote in

a document (apparently widely distributed) describing "blatant criminal" misconduct without any qualifying words such as "alleged". I am also proceeding to obtain affidavits from witnesses interviewed by the CID who state they were "misquoted" by the CID.

During this long and most painful experience of being under intense investigation, not knowing the particulars and scope, and not being permitted to seek advice or information from the Army staff or CID, I did serious soul searching on not a few sleepless nights. I agonizingly reviewed every facet of my life that I could recall. I thought through the whole of the anonymous allegations: "my God, am I guilty of favoritism to BDM?". I in my heart, thought and rethought the entire process and also talked over the details of the situation with knowledgeable procurement people. Consistently, all results were "no, it was totally above board".

As far as the CADE contract was concerned, the result of the investigations was a letter of reprimand by the Army Vice Chief of Staff (not my former classmate as reported in several news articles) for allowing "the release of acquisition information" and creating "the appearance of giving preferential treatment to a potential contractor." There is no recourse to a letter of reprimand other than a rebuttal. I chose not to rebut out of respect for my commander and also because I felt the best approach was to attempt to convince the CID (as its own appellate authority) that it was in error and that it should amend its report to set the record straight. This process has been painfully laborious. It may be impossible to convince the CID that it reached erroneous conclusions, especially since that agency took so long in its investigation. I may have to turn to the Administrative Procedures Act in the Federal Court system to attempt to resolve the issue. (If I had been offered non-judicial punishment under Article 15, UCMJ, I would have demanded a court martial to clear the matter.)

The letter of reprimand was dated March 1988 and formally handed to me sometime after that, but the Vice Chief of Staff had indicated to me that the matter had been resolved and that this was the end of it.

The Army leadership took final action, it exacted punishment by the letter of reprimand, and the matter was closed. The matter had been resolved before I requested permission in May to retire 30 June 1988. I was told that I could stay on another year in my same capacity. My decision to retire was unrelated to the letter of reprimand.

I have devoted over thirty-two years of loyal and dedicated service to my country. I may not have been perfect, but giving

information to a contractor for its unfair advantage is not one of my faults. The Army gave me no favors in its investigation. In fact, the opposite is true for the CID reached unjustified conclusions through a result oriented investigation. The entire experience was indescribably gruelling and unsettling; it continues still.

Can one ever end such a nightmare? Can one clear his name in such a situation? (A court martial or a trial would be far superior to being convicted by continuing allegations and innuendoes in some of the press.) Possibly I may never clear up the matter; perhaps this is the price for public service.

The "system" as it exists has serious flaws. Clearly there is confusion on what AR 600-50 really states and means on procurement information; clarification in unambiguous terms is urgently needed. Investigations of suspected violations must be impartial, professional, and rapid. Simplification, improvement, and consistent definition of ethical standards and the pursuit of those standards fairly would accomplish more in enticing qualified, dedicated people to enter national service than providing pay raises. Greater pay can never compensate for those long days and years away from families, for the awesome responsibilities, for few thanks, and for recurring abuse. Leaders we need, today; those we require to train for leadership positions tomorrow do not wish to enter and predictably will not remain in public service leadership positions to undergo senseless witch hunts, second guesses after the fact, and public muckraking.

I hope Mr. Chairman that you and your committee will look carefully at the goals and objectives of ethics in government and into fair, rapid, professional investigations and strong enforcement of clear, sensible, and manageable rules of conduct.

Sir, thank you for your courtesies. This concludes my statement.

Very Respectfully,

JOHN B. WALL
Lt. General, U. S. Army (Retired)

JOHN GLENN, OHIO, CHAIRMAN

SAM NUNN, GEORGIA
CARL LEVIN, MICHIGAN
JIM SASSER, TENNESSEE
DAVID PRYOR, ARKANSAS
JEFF BINGAMAN, NEW MEXICO
HERBERT KOHL, WISCONSIN
JOSEPH LIEBERMAN, CONNECTICUT

WILLIAM V. ROTH, JR., DELAWARE
TED STEVENS, ALASKA
WILLIAM S. COHEN, MAINE
WARREN B. RUDMAN, NEW HAMPSHIRE
JOHN HEINZ, PENNSYLVANIA
PETE WILSON, CALIFORNIA

LEONARD WEISS, STAFF DIRECTOR
JO ANNE BARNHART, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

March 24, 1989

The Honorable Robert Costello
Under Secretary of Defense for Acquisition
The Pentagon
Washington, D.C. 20301

Dear Dr. Costello:

On behalf of the Subcommittee on Oversight of Government Management, we would like to thank you for your testimony at the Subcommittee's recent hearings on the management of inside information in the DOD acquisition process.

As you know, we are concerned that DOD's existing rules dealing with inside information are highly complex, confusing, unclear, and occasionally misunderstood even by the officials responsible for administering them. Your commitment to issue a comprehensive statement of the Department's disclosure policies as to particular categories of documents should help bring much-needed order and consistency to DOD's policy and practice on this issue.

Much has been said in recent years about the need for regulatory simplification and streamlining at the Department of Defense. The 336 separate regulations, policy letters, guidelines, memoranda, instructions, orders, notes, and pamphlets cited by the Department in response to our pre-hearing letters indicate that the management of inside information is an area where such an effort would be particularly appropriate.

For this reason, we urge you to go a step beyond issuing a DOD policy on disclosure and make this a test case of the Department's commitment to regulatory simplification and streamlining by issuing a single regulation applicable to all of the services.

In addition, your testimony and the testimony of other DOD witnesses raised several policy questions which we would like you to address.

1. The Under Secretary of the Navy, the Honorable H. Lawrence Garrett III, testified that the Navy plans to develop a uniform curriculum and a mandatory training program on the handling of inside information. Do you agree that it would be helpful to develop and institute such a program on a uniform basis throughout DOD? If so, could you establish a timetable for doing so?

2. The Under Secretary of the Army, the Honorable Michael P. W. Stone, testified that the Army makes counselors available at all levels to advise its personnel on the handling of inside information. Do you agree that it would be helpful to institute this approach on a uniform basis throughout DOD? Would it be useful to have, as DOD has with ethics issues, a designated individual or office which any DOD personnel can call for guidance on releasing inside information?

To expedite our efforts to complete a hearing record, we would appreciate a response to these questions by Friday, April 7, 1989.

Thank you again for your helpful testimony and for your assistance in this important matter. If you have any questions, please give me a call, or have your staff contact Peter Levine of the Subcommittee staff at 224-3682.

Sincerely,

Carl Levin
Chairman

William S. Cohen
Ranking Minority Member

Subcommittee on Oversight of Government Management

CL:pkl

INSERT FOR THE RECORD									
	HOUSE / SENATE	APPROPRIATIONS COMMITTEE		HOUSE / SENATE	ARMED SERVICES COMMITTEE		HOUSE / SENATE	OTHER	
						X		Government Affairs	
HEARING DATE	TRANSCRIPT PAGE NO.		LINE NO.		INSERT NO.				

Training Regarding Inside Information

Senator Levin. The Under Secretary of the Navy, the Honorable H. Lawrence Garrett III, testified that the Navy plans to develop a uniform curriculum and a mandatory training program on the handling of inside information. Do you agree that it would be helpful to develop and institute such a program on a uniform basis throughout DoD? If so, could you establish a timetable for doing so?

Dr. Costello. I agree that the Navy's initiatives would be very helpful. We have discussed this with the Navy and expect to have a uniform curriculum available by mid-year for the Services to conduct necessary training.

Counsels on Inside Info

Senator Cohen. The Under Secretary of the Army, the Honorable Michael P.W. Stone, testified that the Army makes counselors available at all levels to advise its personnel on the handling of inside information. Do you agree that it would be helpful to institute this approach on a uniform basis throughtout DoD? Would it be useful to have, as DoD has with ethics issues, a designated individual or office which any DoD personnel can call for guidance on releasing inside information?

Dr. Costello. I think extension of this Army initiative is appropriate. Generally, the supporting counsel for an organization will respond to such questions. I believe it could help streamline things if an individual is designated for that purpose and will take action to do so.

OFFICE		DATE PREPARED
ODASD(P)CPA		
ACTION OFFICER/EXTENSION		DATE PREPARED
Wayne Wittig/78334		April 6, 1989

COORDINATION								
OFFICE	DASD(P)							
NAME	Epsecton							
DATE	4/11/89							

DD FORM 2136
1 Nov 77